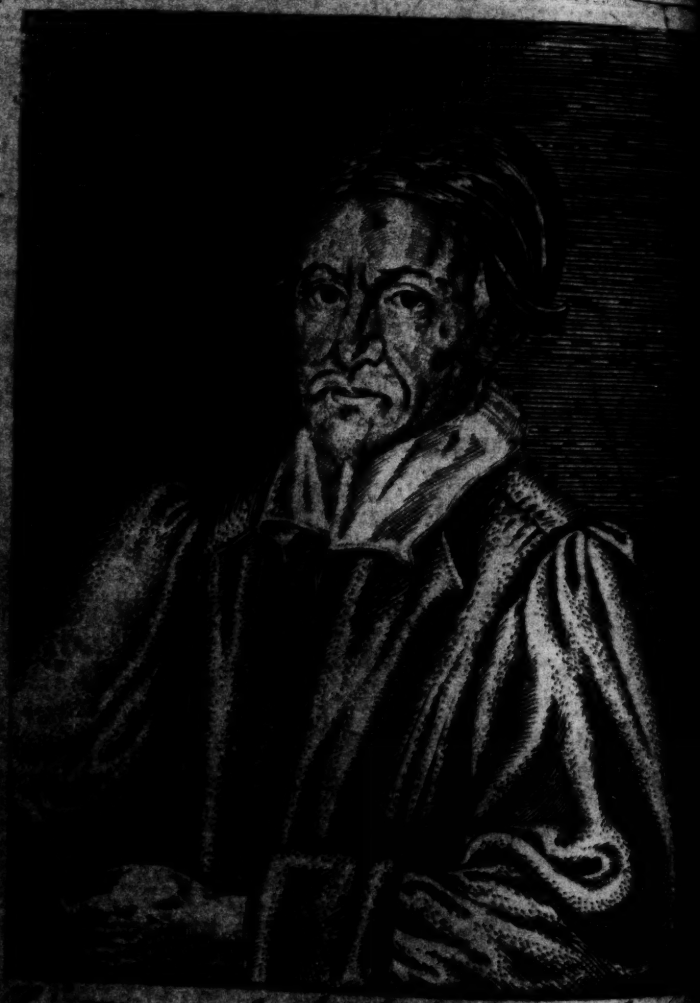

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Shook the bold Senat's Legislative Power;
Sign of whose words twelve Reames of votes ex
As mountaines mov'd by graines of mustard-se
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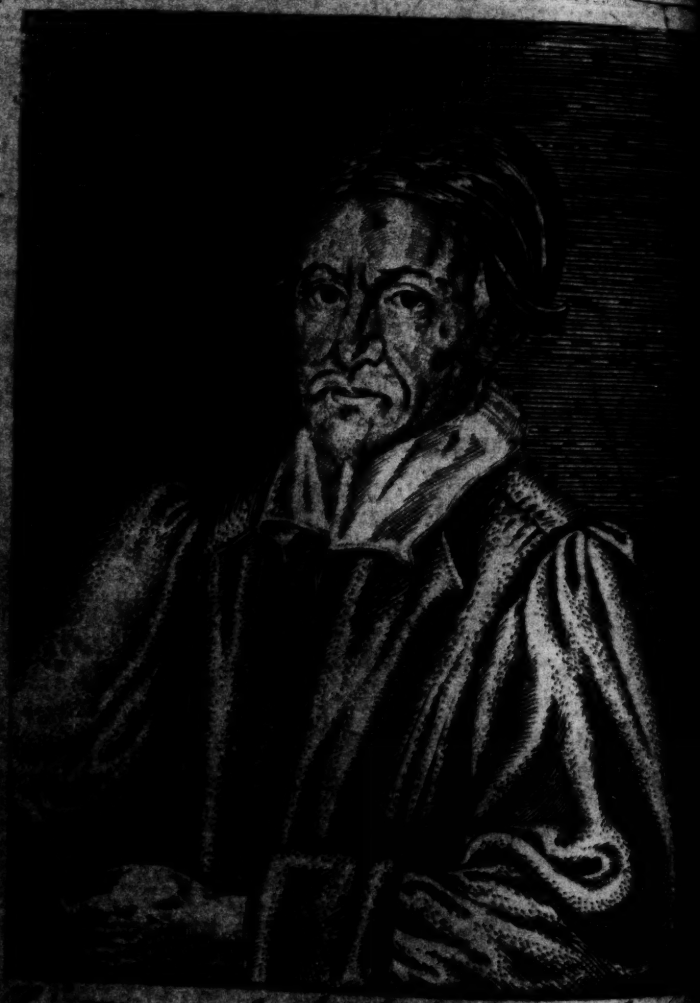
He that will save a Crowne must know and da

Sould by J. Giles at Furnivals-Inn-gate. J. Berkenhe



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THE
ORKS
OF THAT
VE and LEARNED
AVVYER
dge Ienkins,

loner in *Newgate*.

UPON
ERS STATUTES,
oncerning, the *Liberty*, and
reedome of the *Subject*.
perfect Table thereto annexed.

Plebs sine Lege ruit.

LONDON,
inted for *I. Gyles*, and are sold at his
hop at *Furnivals-Inne*. MDCXLVIII.

BRITISH MUSEUM

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ther and the Sonne to cover their Treaſo
hatched in their hearts, invented this damna
ble and damned opinion, that Homage, an
Oath of Allegiance, was more by reaſon o
the Kings Crowne (that is his Politique Ca
pacity) than by reaſon of his perſon; upo
which opinion they inferred three execrable
and deteſtable Conſequences.

First, if the King do not demeane himſelfe
by reaſon, in the right of his Crowne, his
Leidges are bound by Oath to remove the
King.

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Writ, Adjournes, Prorogues, and dissolv
the Parliament, by the Law, at his pleasu
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The Writ whereby the King assembled t
two Houses, which is called the Writ of Su
mons, at all times, and at this Parliament w
sed, and which is the warrant, ground, an
foundation of their meeting, is for the Lor
of the House of Peers, to Consult and Tre
with the King (that is the *Parler*) of gre
Concernments, touching;

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to doe, and to consent to such things, which
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The styles of the Acts printed from 9. Hen. 3. to 1. Hen. 7. were either, the King Ordaines at his Parliament, &c. Or, the King Ordaineth by the advice of his Prelates and Barons,

and at the humble petition of the Com-

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The Priviledge of Parliament protects no man

man in case of Treason or Felony p. 15, 16 78.

Parliaments are as the times are; if a turbulent Faction prevailes, the Parliament are wicked, if the times be sober, modest, prudent, and not biassed, the Parliament are right, good, honourable, and good Medicines and Salves. p. 41. 42.

The present Parliament.

THis Parliament beganne 3. *Novemb.* 1640. and in the beginning thereof the King acquitted the Ship-Money, Knighthood-Money, seven Courts of Justice, consented to a Triniall parliament, setled the Forrest bounds, tooke away the Clarke of the Market, of the Houshold, trusted the Houses with the Navy, passed an Act not to dissolve this Parliament without the Houses assent: No people in the world so free, if they could have been content with Lawes, Oathes, and Reason, and nothing more could, nor can bee devised to serve us, neither hath been in any time before. p. 39.

Notwithstanding all this (*Jan.* 10. 1641.) the King was driven away from *London*, by frequent Tumults, and 2. thirds, and more of the Lords had deserted that House, for the same cause, and the greater part of the House of Commons, left that House also for the same

same reason: New men chosen in their places, against Law, by the pretended Warrant of a counterfeit Seale, and in the Kings name, against his consent, leavying War against Him, and seizing his Forts, Ports, Magazins, and Revenue, and converting them to his destruction the subversion of the Law, and Land, laying Taxes on the people never head of before in this Land, devising new Oathes to oppose the Forces raised by the King, &c. p. 35.

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1. Against Common right; for thereby the parliament men will not pay their debts: And they

they may doe wrong to other men, *Impune* besides the utter destruction of all mens actions, who have to doe with Parliamentmen, by the Statute of Limitation. 21. *Jacob.*

2. Against common reason, for parliaments were made to redresse publique Grievances, not to make them.

3. Impossible, the Death of his Majesty (whom God long preserve, dissolving it necessarily.

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God ſave the King.

BRITISH MUSEUM

o the Honourable

cieties of *Grayes Inne*,
and of the reſt of the Innes
of Court, and to all the
Profeſſors of the
LAW.

Have now ſpent Forty five
yeares in the Study of the Lawes
this Land, being my Profeſſion,
dr, and by the conduct of which
awes this Common-wealth hath
uriſhed for ſome ages paſt in
reat ſplendor and happineſſe (jam
ges eſt ubi Troja fuit.) The
ead and full body of this King-
me hath of late yeares fallen in-
to an extreame ſickneſſe; it is
ruly ſaid that the cauſe of the
ſeaſe being knowne, the diſeaſe
s eaſily cured. There is none of
om I hope, but doth heartily wiſh

the recovery of our common pare
our native country (Mor
antiquis ſtat res Britannic
I call God to witneſſe that this
courſe of mine hath no other
then my wiſhes of the com
good : how farre I have been f
Ambition my life paſt, and y
owne knowledge of me, can ab
dantly informe you : and many
you well know, that I ever d
ſted the Ship-money and Mon
lies, and that in the beginning
this Parliament, for oppoſing
exceſſes of one of the Biſhops, I
under three Excommunications,
the Examination of ſeventy ſe
Articles in the high Commi
on Court. His ſacred Maje
(*God is my witneſſe*) *made me*
Judge in the parts of Wales a
my will, and all the meanes I
able to make : and a patent for
place was ſent me, for the which
have not paid one farthing ; a
the place is of ſo inconſiderable
bene

that it is worth but 80 l.
paid, and it cost
yeare I served twice as
of my owne estate in the
an ordinary and frugall
That which gave me
was, that I knew well
Majesty was a just and a
prince,
the time of the Attorney-
Master Noy and the Lord
they were pleased to make
of me, and many refer-
concerning suits at Court
that occasion came to my
ledge; and as I shall answer
God upon my last account this
that all or most of the re-
which I have seene in
kind (and I have seene many)
to this effect, that his Ma-
would be informed by his
selfe if the suits preferred were
greeable to the Lawes, and not
convenient to his people, before
would passe them, (what could

a just and pious Prince doe more
Gentlemen: you shall finde the
and the Cure of the present
distemper in this discourse, a
God prosper it in your hands
thoughts, and words, as the
deserves.

Hold to the Lawes, this
body recovers: forsake them,
will certainely perish. I have re
ved to tender my selfe a Sacri
for them as cheerefully, and L
(by Gods assistance) as constan
as old Eleazer *did for the*
Lawes of his Nation.

Your Well-wisher

David Jenkins.

Now Prisoner in the Tow

LE

LEX TERRÆ.

THe Law of this Land hath three grounds: First, Custome. Secondly, Judiciall Records, Thirdly, Acts of Parliament. The two latter are but declarations of the Common-Law and Custome of the Realme, touching Royall Government. And this Law of Royall Government is a Law Fundamentall.

The Government of this Kingdome by a Royall Soveraigne, hath been as ancient as History is, or the memoriall of any time; what power this Soveraignty alwaies had, and used in warre and peace in this Land, is the scope of this discourse; That Usage so practised makes therein a Fundamentall Law, and the Common Law of the Land is common Usage, Plowdens Commentaries 195. For the first of our Kings sitience the Norman Conquest, the first William, second William, Henry the first,

The Kings Prerogative is a principall part of the common Law. *Com. Litt.* 344. 27 *Hen.* 8. *Stamford, prar. fol.* 1. 2 *Pars instit. fol.* 496 3 *Pars instit. pag.* 84.

first, **Stephen**, **Henry** the seco
and **Richard** the first, the Custo
of the Realme touching **Royall**
vernment, were never questio
The said Kings injoyed them i
full measure. In King **John**
the Nobles and Commons of
Realme conceiving that the anc
Customes and Rights were viol
and thereupon pressing the said
to allow them in the severall
King **John**, the said Liberties
by King **John** allowed, and by
Sonne **Henry** the third, after in
nigth yeare of his Reigne confi
and are called *Magna Charta*,
Charta de Foresta, declared fo
hundred twenty two yeares sinc
by the said Charters.

Now rests to be considered, a
the Subjects had obtained th
Rights and Liberties, which were
other then their ancient Custo
and the fundamentall Rights of
King as **Soveraigne** are no othe
How the Rights of **Soverai**
continued in practise from
the thirds time untill this presen
liament of the third of Novem
1640. for before **Henry** the th
time, the **Soveraignty** had a ve
full Power.

Rex habet Potestatem & jurisdictionem super omnes qui in terra sua sunt, ea quæ sunt jurisdictionis & paucis ad nullum pertinent nisi ad Regiam dignitatem, vel etiam coersionem, ut Delinquentes puniat & coerceat: This proves where the supreme power is. Bracton. temp H. 3. l. 4 cap. 24. Sect. 1.

A Delinquent is he who adhears to the Kings Enemies, Com. Sur. fol. 161. This shewes who are Delinquents.

Omnis sub Rege, & ipse sub nullo nisi tantum Deo, non est inferior Subjectis, non parem habet in regno suo. This shewes where the supreme power is. Sect. 3. Brac ibid.

Rex non habet superiorem nisi Deum, satis habet ad pœnam quod timere cogatur ultorem. This shewes where the supreme power is. Bracton. l. 5. tract. 3. de delictis, cap. 3 Bracton. l. 3 cap. 7.

Treasons, Felonies, and other Pleas of the Crowne, are propria placita Regis: This shewes the same power.

By these passages it doth appeare what

what the Custome was for the pow
of Soveraignty before that ti
the power of the Militia, of coyn
of Money, of making Leagues w
forraigne Princes, the power of p
doning, of making of Officers, &
All Kings had them, the said Powe
have no beginning.

Sexto Edw. 1. *Com. Sur. Litl.* t
Lege Homage, every Subject owes
the King (*viz.*) Faith *de Membr*
de vita, *de terreno Honore*, t
Edward I. forme of the Oath, *inter veteres*
tuta is set downe; We read of
such, or any Homage made to the t
Houses, but frequently of such ma
by them.

It is declared by the Prelates, Ear
Barons, and Commonalty of t
Realme, that it belongeth to the Kin
9 Ed. 1. Statute at large, fol. 42. and his Royall Segniory, straitly
defend force of Armour, and a
other force against the Kings peace,
all times when it shall please him, an
to punish them that shall doe contra
ry according to the Law and Usage o
the Realme, and hereunto they are
bound to ayd their Soveraigne Lord
at all seasons when need shall be.
Here the supreame power in the time
of Parliament, by both Houses is de-
clared to belong to the King.

At

At the beginning of every Parliament, all Armes are, or ought to be forbidden to be borne in London, Westminster, or the Subburbs. This determines the multitudes comming to Westminster, and the Guards of armed men.

7. Ed. 2. 4. pars instit. 14.

All who held by Knights service, and held twenty pounds *per annum*, were distraynable *ad Arma militaria gerenda*: This agrees with the Records of ancient time, continued constantly in all Kings times, but at this Parliament 3. November, 1640. The King out of his grace, discharged this Law, which proves that the power of Warre and preparation thereto, belongs not to the two Houses but only to the King.

1 Edw. 2. de Militibus.

The two **Spencers** in Edw. 2. time hatched (to cover their Treason) this damnable and damned opinion (for) That Ligeance was more by reason of the Kings politick capacity then of his person, upon which they erected these execrable and detestable consequences. First, if the King demeaned not himselfe by reason in the right of his Crowne, his Lieges were bound by Oath to remove him. Secondly, seeing the King could not be removed by suit of Law it was to

Edw. 2. Calvins Case Cook le 7. fol. 11.

be done by force. Thirdly, that
Lieges be bound to governe in de
of him.

All which tenets were condem
by two Parliaments, the one call
exilium Hugonis in *Ed.* 2. time; the
ther by 1. *Edw.* 3. *cap.* 2. All whi
Articles against the Spencers
confirmed by this last Statute, the A
tiles are extant in the booke call
vetera Statuta. The separation
the Kings person from his power,
the principall Article condemned,
yet all these three damnable, detest
ble, and execrable consequents,
the grounds whereupon this prese
time relies, and the principles whe
upon the two houses found their cau

The Villeine of a Lord, in t
presence of the King cannot be se
zed; for the presence of the King is
protection for that time to him: Th
shewes what reverence the Law giv
to the person of a King.

Plowden. com. 322. 29 ass. pl. 49

Regis, sacro oleo uncti sunt capa
spiritualis jurisdictionis: But the tw
Houses were never held capable
that power.

33 Ed. 3. ayde de roy, 203 Fiez. 10 H. 7. 16.

Rex est persona mixta cum sacerd
habet Ecclesiasticam & spiritualem juri
dictionem: This shewes the Kings po
wer in Ecclesiasticall Causes.

Th

The Lands of the King is called in *Com. Sur. Littl Sect. 4.* *Patrimonium sacrum*: The Houses [illegible] have meddled with that sa[illegible] Patrimony.

3 *Ed.* 3. 19

The King hath no Peere in his [illegible], and cannot be judged? *Ergo* [illegible] two Houses are not above him.

The Parliament 15. *Ed.* 3. was re[illegible], for that it was against the [illegible] Lawes and prerogative. 4 *part* [illegible] *fol.* 25. This shewes cleerely [illegible] Propositions sent to Newcastle, [illegible] not to have beene presented to [illegible], For that they are contra[illegible] the Lawes and his Prerogative.

4 *Part, Cooke instit. fol.* 14. 42. *E.* 3.

The Lords and Commons cannot [illegible] in Parliament to any thing that [illegible] to the dis-inherision of the King [illegible] his Crowne, to which they are [illegible]: This condemnes the said [illegible] likewise.

Parliament Rol. num. 7. *Rex & consuetude Parliamenti.*

To depose the King, to imprison [illegible] until he assent to certaine de[illegible], a warre to alter the Religi[illegible] established by Law, or any other [illegible], or to remove Councellors, to [illegible] a Castle or Fort against the [illegible], are offences against that Law [illegible] to be treason by the resoluti[illegible] herein after mentioned, by that [illegible] men are bound to ayd the King [illegible] warre is levied against him in his

25 Ed. 3. ca. 2. his Realme. King in his Statute ma
be intended in his naturall body a
perſon that only can dye; for to co
paſſe his death, and declare it by o
vert Act is declared thereby treaſon
to incounter in fight ſuch as come t
ayd the King in his warres, is trea
ſon.

Compaſſing of the Queens death
of the Kings Eldeſt Sonne, to coyn
his money, to counterfeit his Great
Seale, to levy Warre againſt him, to
adhere to ſuch as ſhall ſo doe, are de
clared by that Act to be high treaſon.
This Statute cannot referre to the
King in his politique capacity, but to
his naturall, which is inſeperable
from the politick; for a body politick
can have neither Wife, nor Childe,
not levy Warre, nor doe any Act but
by the operation of the naturall bo-
dy: A Corporation or body politick
hath no ſoule or life, but is a fiction
of the Law, and the Statute meant not
fictitious perſons, but the body natu-
rall, conjoined with the politique,
which are inſeperable.

The clauſe in that Act, that no
man ſhould ſue for grace, or pardon
for any offence condemned or forfei-
ture given by that Act, was repealed
by a ſubſequent Act in 21. R. 2 holden

[illegible] unreasonable, without example [illegible] against the Law and custome of [illegible] Parliament. This condemnes the [illegible]position for disabling the King to [illegible]don. 4 *pars instit. fol.* 42. The Act [illegible] 11. R. 2. so much urged by the o[illegible]ther side, was an Act to which the [illegible]ing consented, and so a perfect Act: [illegible] Note the Army then about the [illegible]: Note that that Law is a[illegible]gainst private persons, and by the 3. [illegible] thereof, the treasons there declared [illegible] declared, to be new treasons made [illegible] that Act, and not to be drawne to [illegible]ample, it was abrogated 21. R. 2. [illegible] revived by an usurper 1 *H.* 4. to [illegible] the people, and by the tenth [illegible] thereof enacts that nothing shall [illegible] treason but what is declared by 25. [illegible] 3.

4. *Pars instit. fol.* 42.

16. *Ed. cap.* 5. 16. *R.* 2. *cap.* 5. *H.* 4.

The Regality of the Crowne of [illegible], is immediately subject to [illegible] and to none other. Plaine words, [illegible]wing where the supreame power [illegible]

The Commission of Array is in [illegible] and no other Commission, *Rot.* [illegible] 5. *H.* 4. *numb.* 24. an Act not [illegible], this Act was repealed by 4. [illegible] 5. P. & *M. cap.* 2. this repealed [illegible] the Act of 1. *Iacobi*, and so it is [illegible] at this day, for the repealing

Statute

Statute is repealed 4. *pars instit.* fol. 51. & 125. published sithence this Parliament, by the desire of the house of Commons, their Order is printed in the last leafe of the commentaries upon *Magna Charta*.

A booke allowed by Sir *Na Brent* called the reason of the War : fol. 65.

Sir *Edward Cooke*, by their party is holden for the Oracle of the Law, who wrote the said fourth part, in a calme and quiet time, and I may say, when there was no need to defend the authority of the Commission of Array.

For that objection, that that Commission leaves power to the Commissioners to tax men *secundum facultates*, and so make all mens estates Arbitrary: the answer is, that in levying of publicke aydes upon mens goods and estates, which are variable, and probably cannot be certainly known by any but the owners, it is impossible to avoyd discretion in the assessments, for so it ever was, and ever will be. By this appeares that the Votes of the two Houses against the Commission of Array, were against the Law.

H. 4.

The death of the King dissolves the Parliament, if Kings should reserve to the politick capacity it would continue after his death, 4 *pars Inst.* 46. which proves that the King can-

b H. 5 4. *pars instit.* 46.

not

[illegible] to be there when he is ab-
[illegible] now he is; there is no inter-
[illegible] the Kingdome the dissolu-
[illegible] of the Parliament by his death,
[illegible] that the beginning and end
[illegible] referrs to the naturall person
[illegible] the King, and therefore he may
[illegible] refuse the Propositions.

[illegible] *H.* 5 *Chap.* 6. to the King onely
[illegible] belongs to make Leagues with For-
[illegible] Princes; this shewes where the
[illegible] power is, and to whom the
[illegible] belongs.

[illegible] *H.* 6. *numb.* 57. *Rott. Parl. Cooks* H. 6.
[illegible] *instit.* 25. No priviledge of Par-
[illegible] is grantable for treason, fe-
[illegible] or breach of the peace; if not
[illegible] any one Member, not to two, not
[illegible] ten, not to the major part, 19 *H.*
[illegible] 62. The Law is the inheritance of
[illegible] King and his people, by which
[illegible] are ruled, King and people; And
[illegible] people are by the Law bound to
[illegible] the King, and the King hath an
[illegible] inheritance to hold Parliaments, and
[illegible] the ayds granted by the Common-
[illegible] If the major part of a Parlia-
[illegible] commit treason, they must not
[illegible] Judges of it, for no man or body,
[illegible] be Judge in his own cause, and
[illegible] as ten or any number may com-
[illegible] treason, the greater number may
[illegible] well.

The

32 H. 6. 13. Plowd. 334. The King by his Letters patent may constitute a County palatine and grant Regall rights, this shewes what the supreame power is.

Ed. 4. 17. *Ed. 4. Rot. Parl. numb. 39.* The priviledge of Parliament is granted for treason, fellony, or breach of the peace, if not for one, not for two, but more, or a major part.

Calvins Case 7. part fol. 82, 12. The same persons must not be Judge and party. A corporate body can commit no treason, nor can treason be committed against a corporate body, 21. E. 4. 13. and 14. but the persons of the men who make the body may commit treason, and commit it against the naturall person of him who to some purposes is a body corporate, but *quatenus corporate* no treason can bee committed by or against such a body; that body hath no soule, no life, and subsists onely by the fiction of the Law, and for this reason the Law doth conclude as aforelaid; therefore the Statue of 25. E. 3. must bee intended of the Kings naturall person, conjoyned with the politique which are inseparable, and the Kings naturall person being at Holmby, his politique is there also, and not at Westminster; for the politique and naturall make one body indivisible.

Plow. com. 213.

If

If all the people of England should
make the league made with a for-
eign Prince, without the Kings con-
sent the league holds & is not broken,
and therefore the representative body
is inferiour to his Majesties.

19 Ed. 4. 46.
22 Ed. 4.
Fitz. jurisdiction bis placito.

The King may erect a Court of
common pleas in what part of the
kingdome he pleaseth by his letters
patents; can the two Houses do the
like?

1 Ed. 3. fol. 2 It cannot be said
that the King doth wrong, declared
by all the Judges and Serjeants at Law
then there.

1 Ed. 3.
4 Ed. 4. 25.
5 Ed. 4 29.

The reason is, nothing can be done
in this Common wealth by the
King grant or any other act of his,
to the Subjects persons, goods,
lands or liberties, but must be ac-
cording to established Lawes, which
the Judges are sworne to observe and
deliver betweene the King and his
people impartially to rich and poore,
high and low; and therefore the
Judges and the Ministers of Justice
are to be questioned and punished if
the Lawes be violated: and no re-
flection to be made on the King. All
Councellors and Judges for a yeere
and three moneths untill the tumults
began this Parliament: were all left
to

3 Parl. Jac. 158.

to the ordinary cause of Justice
what hath been done sithence is
torious.

For great Causes and considera
R. 3. ons an Act of Parliament was ma
1 R. 3. cap. for the surety of the said Kings pe
15. son: if a Parliament were so render
King *Rich.* the 3. the Houses ha
greater reason to care for the prese
vation of his Majesty.

Hen. 7. The Subjects are bound by the
11 H. 7. fol. 1. allegiance to serve the King for t
time being, against every Rebellio
power and might, reared against h
within this Land, that it is against
Lawes, reason and good conscienc
if the King should happen to be va
quished that for the said deed
true duty and allegiance they shou
suffer in any thing, it is ordain
they should not; and all Acts
processe of Law hereafter to
made to the contrary are to be voi
This Law is to be understood of t
naturall Person of the King; for
politick capacity cannot be vanqu
sheds nor war reared against it.

Relapsers are to have no benefit
this Act.

11 H. 7. 20. It is no Statute, if the King assen
4 H. 7. 18. *Henry* 8. not to it, and he may dissent, thi
7 H. 7. 14. proves the negative voice.

The

The King hath full power in all [illegible] to do justice to all men: this is [illegible] of the King, and not of the [illegible] Houses. 24 H.8.c.12. 25 H.8.c.28

The Commons in Parliament acknowledge no superiour to the King [illegible] God, the House of Commons [illegible] the King to be above the representative body of the Realm.

Of good right and equity the [illegible] and sole power of pardoning [illegible], fellonies, &c. belong to the [illegible], as also to make all Justices of [illegible] and Terminer, Judges, Justices of the peace, &c. This Law con[illegible] the practice of both Houses at [illegible] time. 27 H.8.c.24. Note.

The Kings Royall Assent to any [illegible] of Parliament signed with his [illegible], expressed in his Letters patents [illegible] the great Seale, and declared to [illegible] Lords and Commons, shall be as [illegible]ctuall, as if he assented in his [illegible] person; a vaine Act if the King [illegible] virtually in the Houses. 33 H.8.c.19. 21.

The King is the head of the Parliament, the Lords the principal members of the body, the Commons the [illegible] members, and so the body [illegible] composed, therefore there is no [illegible] Parliament without a King, [illegible] there is a body without a head. Dier 38. H.8.fo.59.60.

There

There is a Corporation by
14 H.8.f. 3. Common-Law, as the King, Lor
and Commons, are a Corporation
Parliament, and therefore they
no body without the King.

34 Ed 3.48. The death of the King discharge
1 Ed.4.2. all mainprise to appeare in any Co
or to keepe the peace.

2 H.4.8. The death of the King discon
1 H.4.10. nues all Pleas by the Common-la
1 Ed.5 1. which agreeth not with the virtu
power insisted upon now.

Ed 6. Writs are discontinued by the dea
2 Ed.6.c.7. of the King; Patents of Judges
Commission for Justices of the Peac
Sheriffs, Escheators, determine
by his death: where is the virtu
power?

All authority and jurisdiction sp
2 Ed.6.c.2. ritual and temporall is derived fro
the King, therefore none from th
Houses

2.3 Ed. 6.c. 2. His Majesties Subjects, accordin
11 Eliz. c.1. to their bounden duties, ought t
Calvins Case. serve the King in his warres, of th
side or beyond the Seas, beyond the
St. Pauls. seas is to be understood for wages
Coke. This proves the power of warres, an
1 Part inst. 69. preparation for warre to be in the
King.

5.6 Ed.c.11. It is most necessary both for com
mon policy and duty of the Subject
to

restraine all manner of shamefull [illegible] against their King, which [illegible] they be heard, cannot but be o[illegible] to his true and loving subjects, [illegible] whom dependeth the whole u[illegible] and universall weale of the [illegible]. This condemnes their conti[illegible] of the weekely Pamphlets, who [illegible] beene so foule mouthed against [illegible] Majesty.

The punishment of all offendors [illegible] the Lawes, belongs to the [illegible] and all jurisdictions do, and [illegible] ought to belong to the King. [illegible] leaves all to his Majesty.

All Commissions to leavy men [illegible] the warre, are awarded by the [illegible]: The power of warre onely [illegible] to the King.

It belongs to the King to defend [illegible] people, and to provide Armes and [illegible]: No speech of the two Hou[illegible]

[illegible] ad sole government de ses subjects. [illegible] naturall le Roy & politique sunt un [illegible]. That is, the king hath the sole [illegible]ernment of his Subjects, the bo[illegible] politick and the naturall body of [illegible] King make one body, and not di[illegible], and are inseperable and indivi[illegible]ble.

The body naturall and politique make

Q. Mary. 1 Mar. Pl. 2. cap. 2.

4. 5 P. & M. c. 3. Q. Eliz. 10 Eliz. Pl. 315.

Plow. 234. 242. 213. Calvins case 7. pars fol. 12. Plow. com. 213.

Plow. 934. 243. 213. *Calvins case* 7. *part fol.* 12

make one body, and are not to be severed: Ligeance is due to the natural body, and is due by nature, Gods Law and Mans Law cannot be forfeited or renounced by any meanes, it is inseparable from the person.

1 *Eliz. cap.* 1 *Cawdries case* 5 *part fol.* 1.

Every Member of the House of Commons, at every Parliament taketh a corporall Oath: That the King is the supreame and onely Governour in all causes in all his Dominions, otherwise he is no Member of that House. The words of the Law are, in all causes, over all persons.

4 *Eliz.* 3. *part instit. fol.* 6. 2.

The said Act of 1 *Eliz.* is but declarative of the ancient Law, *Calvins Case, ibid.*

The Earle of *Essex*, and others assembled multitudes of men to remove Councellors, adjudged Treason by all the Judges of *England*.

39 *Eliz. Hil.* 1 *Iacobi ibid*

To depose the King, or take him by force, to imprison him untill he be yeelded to certaine demands, adjudged Treason, and adjudged accordingly in the Lord *Cobhams* Case.

39 *Eliz. Plow. case f.* 9. &c. 26. By all the Judges of England, *ibid.* 10. *Eliz. Plow.* 316

Arising to alter Religion established, or any Law, is treason; so is the taking of the Kings Castles, Forts, Ports or Shipping, *Brooke* treason 2. 3. & 4. *Philip* and *Mary*, *Dier*, *Stafford's* Case concerning Scarborough.

The

The Law makes not the servant greater then the Master, nor the subject greater then the King, for that were to subvert order and measure.

The Law is not knowne but by Usage, and Usage proves the Law, and how Usage hath been is notoriously knowne. 10 Eliz. Plow. 319

The King is our onely rightfull and lawfull Leige Lord and Soveraigne, we doe upon the knees of our hearts ...ize constant Faith, Loyalty, and Obedience to the King and his Royall progeny, in this high Court of Parliament, where all the body of the Realme is either in person, or by representation; We doe acknowledge that the true and sincere Religion of the Church is continued and established by the King. And doe recognize, as we are bound by the Law of God and Man, the Realme of *England*, and the Imperiall crowne thereof doth belong to him by inherent birthright, and lawfull and undoubted succession, and submit our selves and our posterities for ever, untill the last drop of our blood be spent, to his rule, and beseech the King to accept the same as the first fruits of our Loyalty and faith to his Majesty and his posterity for ever; and for that this Act is not

K. Iamet, 1 Iac. cap. 1
9 Ed 4 fol. 8

not compleat nor perfect without
Majesties assent, the same is
desired. This proves that the Ho
are not above the King; that K
have not their titles to the Crown
the two Houses, but by inhe
birth right, and that there can be
Statute without his expresse asse
and destroyes the Chimera of
Kings virtuall being in the Houses.

3 *Iac. cap.*4. 23 *Eliz. c.*1. To promise obedience to the P
or any other State, Prince or Pot
tate, other then the King, his hey
and successors, is treason; and the
fore those persons who call the ho
the Estates offend this Law.

K. Charles Collection of Ordinances, *fol.*727. 1 *pars ib. fol.* 728. Such Bills as his Majesty is bound
conscience and justice to passe, are
Law without his assent.

To designe the ruine of the K
person, or of Monarchy, is a mo
strous and injurious charge.

*ibid. fol.*865. *Ubi lex non distinguit, non est distin
guendum*, all the aforesaid Acts
Lawes do evidently prove the
tia to belong to the King: that
King is not virtually in the two H
ses; that the King is not consider
separately in relation to his poli
capacity; that the King is not a p
son trusted with a power, but that
is his inherent birth-right from G
Natur

... and Law, and that he hath not ... from the people: These ... have none of those distinctions ... and politicke, *abstractum* ... power and person: in ... time this Island had Kings, and ... since, which is almost 17 hundred ... agoe.

... Kings can be named, in any ... made in this Kingdome by the ... A Parliament never made ... for they were Kings before: ... Parliaments are summoned by ... Kings Writs, which for Knights, ... and Burgesses begins thus:

... vic. Wilts. Saltem. Quia ... de avisamento & assensu ... nri, pro quibus. arduis ... negotiis nos statum ... Regni nri. Aug. ... Anglie. concernenti- ... quoddam Parliamentum ... apud B. teneri ordinavimus ... cum Prelatis Magnatib. ... dicti Regni nri. ... habere & tractatum, ... firmiter injungen- ... quod facta Proclamatione in

 prox.

prox. Comitatu tuo post recep-
nem ejusd. Brevis, duos Mil-
gladiis cinctos, &c. eligi fac-
ad faciendum & consentien-
hiis quæ tunc ibidem de Comm-
Concilio uro. Angl. faventi
contigerit ordinari super Neg-
ante dictis, ita quod pro defectu
testatis hujusmodi seu propter
providam electionem Mile-
Civium, & Burgensium pr-
dicta negotia ura, infecta non
manerent.

a pars Inst. 241.

The King is *Principium, caput &*
nis Parliamenti, the body makes
the head, nor that which is *poster*
that which is *prior*, *consilium non*
Preceptum, *consiliarii non sunt Prece-*
ris, for Counsell to compell a cons-
hath not been heard of to this t-
in any age, and the House of C-
mons, by the Writ, are not ca-
ad consilium; the Writs to the tw-
Judges, Kings Counsell, twelve
sters of the Chancery are *consilium*
pensuri, and so of the Peeres.
Writs for the Comminalty, *Ad fa-*
dum & consentiendum: Which sh-
what power the representative b-

a pars Instit. fol. 3. & 4

they have not power to give an
neither doe they claime it.

The King at all times, when there
Parliament, and in Parliament
with the advice of the Jud-
of the Law, 12 in number, for
at least hath two Sergeants
fewest; an Attorney and Soli-
twelve Masters of the Chan-
his Councell of State consisting
great Prelates, and other
Personages, versed in State
when they are fewest to the
of twelve. All these persons
of great substance, which
preserved, but by the keeping
the Law; The Prelates versed in
Law, the other Grandees in
of State, and managery of
Government; The Judges, Kings
Attorney, Solicitour, and
of the Chancery versed in the
and Customes of the Realme:
sworne to serve the King and his
justly and truly; the King is
sworne to observe the Lawes, and
Judges have in their Oath a
that they shall doe common
to the Kings people, according
the established Lawes, notwith-
any command of the King
the contrary, under the Great Seale

The Oath of the Justices 18 of E. 3. among Statutes of that yeare.

 or

or otherwiſe, the people are ſafe
the Lawes in force without any
The Law finding the Kings of
Realme aſſiſted with ſo many gre
men of Conſcience, Honour a
skill in the rule of Common-weal
knowledge of the Lawes, and bou
by the high and holy bond of
Oath upon the Evangeliſts, ſeru
among other powers upon the Kin
a power to refuſe any Bill agreed u
on by both Houſes, and power
pardon all offences, to paſſe a
Grants in his Minority, (there a
many great perſons living hold many
thouſand pounds a yeare by pate
from *Edward* the ſixth, paſſed when h
was but ten yeares of age) not to b
bound to any Law to his prejudic
whereby he doth not binde himſelf
power of war and peace, coyning
Mony, making all Officers, &c. T
Law, for the reaſons aforeſaid, hath a
proved theſe powers to be unqueſtio
nable in the King, and all Kings ha
enjoyed them till 3 *Nov.* 1640.

It will be ſaid notwithſtanding a
this fence about the Lawes, the Law
have been violated, and therefore t
ſaid powers muſt not hold, the tw
Houſes will remedy this.

The anſwer to this is evident
There

[illegible] is no time past, nor time pre-[illegible], nor will there be time to come, [illegible] long as men manage the Law; [illegible] the Lawes will be broken more [illegible] lesse, as appeares by the story of [illegible]ery age. All the pretended violati-[illegible] of this time were remedied by [illegible]ts to which the King consented be-[illegible] his departure 10. *Jan.* 1641. be-[illegible] then driven away by Tumults: [illegible] the Houses for a yeare and almost [illegible]ree Moneths, from 3 *Nov.* 1640. [illegible] 10 *Jan.* 1641. as aforesaid, being a [illegible]are and almost three Moneths, had [illegible] and liberty to question all those [illegible]sons who are either causes or in-[illegible]ments of the violation of any of the [illegible].

Examine how both Houses reme-[illegible]ed them in former times. First, [illegible]ching Religion, what hath been [illegible] this way? Both Houses in *Hen-[illegible]* the eights time tendred to him a [illegible] to be passed called commonly [illegible] Bill of the six Articles, this was [illegible]ceived by them to be a just and a [illegible]essary Bill: Had not *Henry* the [illegible] done well to have refused the [illegible] of this Bill? Both Houses [illegible]dred a Bill to him to take the rea-[illegible] of the Scriptures from most of [illegible] Laity: Had not King *Henry* the

eight deserved much praise to reje
this Bill? In Queene *Maries* t
both Houses exhibited a Bill to h
to introduce the Popes power, and t
Roman Religion; had not Quee
Mary done well to have refused th
Bill? Many such iustances may be g
ven, The two Houses now at Wes
minster I am sure will not deny h
the refusall of such Bills have bee
just, the King being assisted as afor
said, and why not so in these times?

For the Civill Government, wh
a Rill did both Houses present
Richard the third, to make good h
Title to the Crowne; had it n
beene great honour to him to ha
rejected it? What Bills were exhi
red to *Henry* the eight by both Ho
ses for bastardizing of his Daught
Elizabeth, a Queene of renowned me
mory, to settle the Crowne of th
Realme, for default of Issue of h
body, upon such persons as he shou
declare by his Letters Patents, or h
last Will, and many more of the like
had not this refusall of passing su
Bil's magnified his vertue, and reno
red him to Posterity in a differe
Character from what he now hath?

And by the experience of all times
and the consideration of humane
frailty,

[illegible], this conclusion is manifestly [illegible], that it is not possible to keep [illegible] at all times (be they the Houses, [illegible] King and his Councell) but [illegible] will be sometimes some devia[illegible] from the Lawes, and therefore [illegible] constant and certaine powers fix[illegible] by the ancient Law must not be [illegible] voyd, and the Kings Ministers; [illegible] Lawes doe punish where the Law [illegible] transgressed, and they onely ought [illegible] suffer for the same.

In this Parliament the Houses ex[illegible] a Bill to take away the suffra[illegible] of Bishops in the upper House of [illegible], and have sithence agreed [illegible] shall be no more Bishops at all, [illegible] not the King if he had so plea[illegible] have answered this Bill with *Le* [illegible] *avisera*, or *ne veuli?* it was a[illegible] *Magna Charta*, *Articuli Cleri* and [illegible] other Acts of Parliament. And [illegible] have farther given these rea[illegible], if it had so pleased him for the [illegible]: First, that this Bill destroyes [illegible] Writ whereby they are made two [illegible] of Parliament, 14 *Hen.* 7, [illegible] 12. *Evesq; est signior de grand honne*[illegible] the King in the Writ being *cum* [illegible] *colloquium habire*: Secondly, [illegible] have been in all Parliaments [illegible] we had any, and voted, but in

 such

such wherein they themselves
concerned: And there have been
shops here sithence we were Chri
ans, and the Fundamentall Law of
Kingdome approves of them: If
of them were conceived offensive, th
were left to Justice, and his Maje
would put in inoffensive men in th
places; but sithence his Majesty h
passed the Bill for taking away th
Votes in Parliament, it is a Law th
bindes us so farre.

Upon the whole matter the L
hath notably determined that Bills
greed by both Houses, pretended to
for the publick good, are to be judg
by the King, for in all Kings Reig
Bills have been preferred by both H
ses, which alwaies are pretended to
for the publique good, and many tim
are not, and were rejected with *Roy
aviſera*, or *Roy ne veult*.

This Parliament began the 3 of *Nov*
1640. before that time in all the kings re
no armed power did force any of the pe
ple to doe any thing against the Law; w
was done was by his Judges, Officers, R
fers, and Ministers from that time unill
20. of *Ia.* 1641. when the King went fr
London to avoyd the danger of frequent
mults, being a year and 3 months, Par
Counsellors and all his Justices & Minist
were left to the Justice of the Law, the
wanted not time to punish punishable m

There

The Sphere of the Houſe of Com-
is to repreſent the grievances of
Country, to grant aydes for the
upon all ſit occaſions extraordi-
, to aſſent to the making or abro-
ing of Lawes: The Orb of the
ſe of Lords to reforme erroneous
gements given in the Kings Bench,
redreſſe the delayes of Courts of
ice, to receive all Petitions, to ad-
his Majeſty with their Councell,
have their Votes in making or
ing of Lawes, and to propoſe
the common good, what they con-
ve meet.

Lex non cogit ad impoſſibilia, Subjects
not to expect from Kings impoſſi-
things, ſo many Judges, Councel-
, Sheriffes, Juſtices of the Peace,
miſſioners, Miniſters of State, that
King ſhould over-looke them all,
not be, it is impoſſible.

The King is vertually in his ordi-
Courts of Juſtice, ſo long as
continue his Courts; their
rge is to adminiſter the Lawes in
, and not to delay, deferre or
Juſtice for any Commandment
the King. We have Lawes e-
ugh, *Inſtrumenta boni ſæculi ſunt boni*
good Miniſters, as Judges and
are many times wanting, the

houses propose new Lawes, or abr-
gation of the old, both induce nov-
ty; the Law for the reasons aforesai
makes the King the onely Judge, w
is assisted therein by a great numb
of grave, learned, and prudent men,
aforesaid.

For the considerations aforesa
the Kings Party adheared to him, t
Law of the Lnnd is their Bar
light, their Guide, no offence
committed where that is not violate
they found the Commission of A
ray warrauted by the Law; th
found the King in this Parliament
have quitted the Ship-mone
Knighthood-money, seven Cou
of Justice, consented to a Trien
all Parliament, setled the Fa
bounds, tooke away the Clarke
the Market of the houshold, trust
the House with the Navy, passed a
Act not to dissolve this Parli
ment without the Houses assent; n
people in the world so free if th
could have been content wi
Lawes, Oathes, and reason, a
nothing more could or can be devis
to secure us, neither hath been in a
time.

Notwithstanding all this we fou
the King driven from London b
frequen

[illegible] tumults, that two thirds and more of the Lords had disserted that House for the same cause, and the greater part of the House of Commons left that House also for the same reason; new men chosen in their places against Law, by the pretended Warrant of a counterfeit Seale, and in the Kings name against his consent, leavying Warre against him, and seizing his Ports, Forts, Magazines and Revenue, and converting them to his destruction, and the subversion of the Law and Land, laying Taxes on the people, never heard of before in this Land; devised new Bothes to oppose Forces raised by the King, nor to adhere to him, but to them in this Warre which they call the Sign the Oath, and the [illegible] Covenant.

By severall wayes never used in this kingdome, they have raised Monies to foment this Warre, and especially to inrich some among them; namely, first, Estrif, secondly, Contributions, thirdly, Sequestrations, fourthly, Fift-parts, fiftly, Twentieth-parts, sixtly, Meal-money, seventhly, Sale of Plunyered goods, eightly, Loanes, ninthly, Benevolences, tenthly, Collections,

ons upon their Fast-dayes, el-
venthly, new Impositions up-
Merchandizes, twelfely, Guar-
maintained upon the charge of pri-
vate men, thirteenthly, Fifty Sub-
sidies at one time, fourteenthly
Compositions with such as they ca-
Delinquents, fifteentlaly, Sale of Bi-
shopr Lands, &c.

§ R. 3. cap. 3 Bract. li. 3. c. 8. Stanford, 192. Sir Ger. Fleetwoods Case, 8. pars Cook 7 H. 4 last leafe.

From the Kings Party meanes o
subsistance are taken; before any In-
dictment, their Lands seized, the
goods taken, the Law allowes a Tra-
tor or Fellon attained, *Necessaria su*
& familiæ suæ invictu & vestitu, where
is the Covenant? Where is the Peti-
tion of Right? Where is the liberty
of the Subject?

First, we have ayded the King in
this Warre contrary to the Negative
Oath, and other Votes: Our Warrant
is the twenty fifth of *Edward* the third,
the second Chapter, and the said re-
solutions of all the Judges.

4. part Instit. 225. 2 Instit. 696. The Law so at the Edition of that booke. Hutton and Crook.

Secondly, we have maintained the
Commission of Array, by the Kings
Command, contrary to their Votes.
We are warranted by the Statute of
the fifth of *Henry* the fourth, and the
judgement of Sir *Edward Cooke*, the
Oracle of the Law as they call him.

Thirdly, we maintained Arch-

Bishops

[illegible] Bishops, whom they [illegible] suppresse. Our warrant is, [illegible] Charta, and many Statutes [illegible]

Fourthly, we have maintained [illegible] Booke of Common prayer, they [illegible] it: Our warrant is five acts [illegible] Parliament in *Edward* the sixt, and [illegible] *Elizabeths* time, 5 *Pelchæ* 35, [illegible] *inter placita Coronæ in Banco* [illegible] New booke of Entries, *fol.* 252. [illegible] for publishing two scandalous [illegible] against the Church Govern[illegible] was indicted, arraigned, attain[illegible] and executed at Tyburne.

Fifthly, we maintained the Militia [illegible] the Kingdome to belong to the [illegible], they the contrary: Our war[illegible] is the Statute of the seventh of [illegible] the first, and many Statutes [illegible], the practise of all times, [illegible] the Custome of the Realme.

Sixthly, we maintained the com[illegible] of the great Seals to be [illegible] Treason, and so of the usurpa[illegible] of the Kings Forts, Ports, [illegible], Castles, and his Re[illegible], and the coyning of Mo[illegible] against them: We have our [illegible] by the said Statute of the [illegible] fifth of *Edward* the third, [illegible] the second, and divers o-

thers

thers since, and the practise of [illegible] times.

Seventhly, we maintaine that the King is the onely supreme Governour in all causes: They, that his Majesty is to be governed by them. Our warrant is the Statutes of the first of Queene *Elizabeth*, Chapter the first; and the fifth of Queene *Elizabeth* the first.

Eightly, We maintaine that the King is King by an inherent birth-right, by nature, by Gods Law, and by the Law of the Land. They say his Kingly right is an Office upon trust: Our warrant is the Statute of the first of King *James*, Chapter the first. And the resolution of all the Judges of *England* in *Calvins* Case.

9 Ed. 4. fol. 4.

Ninthly, wee maintaine that the politick capacity is not to be severed from the naturall: They hold the contrary: Our warrant is two Statutes (*viz.*) *exilium Hugonis in Edward* the seconds time, and the first of *Edward* the third Chapter the second, and their Oracle who hath published it to Posterity, that it is damnable, detestable, and execrable Treason, *Calvins* Case *yeers* 7. *fol.* 11.

Tenthly, wee maintaine that who

[illegible] the King at home or abroad, [illegible] not to be molested or questio[illegible] for the same, they hold and pra[illegible] the contrary; Our warrant is [illegible] Statute of the eleventh of *Henry* [illegible] seventh, Chapter the first.

Eleventhly, wee maintaine that [illegible] King hath power to disassent [illegible] any Bill agreed by the two Hou[illegible]: which they deny: Our war[illegible] is the Statute of the second of [illegible] the fifth, and the practice of all [illegible], the first of King *Charles*, Chap[illegible] the seventh, the first of King [illegible], Chapter the first.

Twelfthly, wee maintaine that [illegible] Parliaments ought to be holden [illegible] a grave and peaceable manner, [illegible] tumults; They allowed [illegible] of the meanest sort of the [illegible] to come to *Westminster* to cry [illegible] justice when they could not have [illegible] will, and keepe guards of armed [illegible] to wait upon them: Our warrant [illegible] the Statute of the seventh of *Ed*[illegible] the second, and their Oracle. Coll. of Ord. fol. 31.

Thirteenthly, wee maintaine that [illegible] is no State within this [illegible] but the Kings Majesty, [illegible] that to adhere to any other State within this Kingdome is high [illegible]: Our warrant is the Sta-

tute

tute of the third of King *James*, Chapter the fourth, and the twenty thirds of Queene *Elizabeth*, Chapter the first.

Fourteenthly, wee maintaine that to levy a warre to remove Counsellours, to alter Religion, or any Law established is high Treason. They hold the contrary: Our warrant is the resolutions of all the Judges of *England* in Queene *Elizabeth* time; and their Oracle agrees with the same.

Fifteenthly, wee maintaine that no man should be impusoned, put out of his Lands, but by due course of Law, and that no man ought to be adjudged to death but by the Law established, the Customes of the Realme, or by Act of Parliament; They practise the contrary in *London*, *Bristol*, *Kent*, *&c.* Our warrant is *Magna Charta*, Chapter the twenty ninth, the Petition of Right, the third of King *Charles*, and divers Lawes there mentioned.

Wee of the Kings party, did and do detest Monopolies, and Shipmoney, and all the grievances of the people as much as any men living; wee do well know that our estates, lives and fortunes are preser-

yed

by the Lawes, and that the King
[illegible] by his Lawes, wee love Par-
[illegible], if the Kings Judges, Coun-
[illegible] or Ministers have done amisse,
[illegible] had from the third of *November*,
[illegible] to the tenth of *January*, 1641.
[illegible] to punish them, being all left to
[illegible], where is the King's fault.

The Law saith the Kings can do
[illegible], that he is *medicus Regni*
[illegible] *patriæ sponsus Regni qui per annu-*
[illegible], is espoused to his Realme at his
[illegible]ation; The King is Gods
[illegible], and is not able to do an
[illegible] thing, these are the words of
[illegible] Law.

11. pars Cooks Reports Magdalen Colledge Case.

[illegible] matter is pretended, that
[illegible] are not sure to enjoy the
[illegible] this Parliament, A succee-
[illegible] Parliament may repeale them;
[illegible] objection is very weake; a Parli-
[illegible] succeeding to that may repeale
[illegible] repealing Parliament: That
[illegible] is endlesse and remedilesse, for
[illegible] is the essence of Parliaments being
[illegible], and as they ought to be, of
[illegible], and all the Members, to have
[illegible] over Parliaments before; Par-
[illegible] are as the times are; If a
[illegible] faction prevailes, the Parli-
[illegible] are wicked, as appeares by the
[illegible] recited before of extreme
wicked

wicked Parliaments; if the times
ſober and modeſt, prudent and not
affied, the Parliaments are right go
and honourable, and they are go
medicines and ſalves; but in t
Parliament *exceſſit medicina modum.*

In this cauſe and warre betwee
the Kings Majeſty, and the two Ho
ſes at *Weſtminſter*, what guide had t
Subjects of the Land to direct th
but the **Lawes**? What mea
could they uſe to diſcerne what to
low, what to avoid, but the Law
The King declares it **Treaſon** to
here to the Houſes in this warre: T
Houſes declare it **Treaſon** to adh
to the King in this warre: The S
jects for a great and conſiderable
of them (Treaſon being ſuch a
as forfeits life and eſtate, alſo rend
a mans Poſterity baſe, begger'ly,
infamous) looke upon the Laws,
finde **the Letter o' the Law** req
them to aſſiſt the King, as before
manifeſted; was ever Subject cri
nally puniſht in any age or Nation
his purſuit of what the Letter of t
Law commands?

The Subjects of the Kingdo
finde the diſtinction and interpreta
on now put upon the Lawes of *A*
ſtraction & Concretum, Powe and Pe
ſon

body politick, and naturall, per-
presence and virtuall, to have
condemned by the Law; and
the Kings Party had both the Let-
of the Law, and the interpretati-
of the Letter cleared to their judg-
ments, whereby they might evident-
perceive what side to adhere to,
satisfaction could modest peace-
and loyall men more desire?

A verbo legis in criminibus & pœnis
recedentium, hath been an ap-
proved maxime of Law in all ages
times: If the King be King and
maine in his Kingly Office (as they
it) then all the said Lawes are a-
them without colour; they say
said Lawes relate to him in his
office, they cannot say otherwise,
make Commissions and Pardons
the Kings name, and the person of
King and his body politick can-
nor ought to be severed as hath
before declared: And the
Members of both Houses have
constantly in this Parlias
that the King is the onely su-
preme Governour in all causes, o-
all persons at this present
time.

Coll. of Ordinances. 777.

5 Eliz. cap. 1.

1 Eliz. cap. 1.

For what of verball or personall
commands of the King which is ob-
jected,

jected; we assirme few things to b
subject thereto by the Law: But h
Majesties Command under his Gre
Seale, which in this warre hath bee
used by the Kings Command for h
Commission to Isavie and array me
that is no personall command (whic
the Law in some cases disallowes
but that is such a command, so mad
as all men hold their Lands by, wh
hold by Patents; all Corporations hav
their Charters which hold by Cha
ters, and all Judgesa and Officers the
places and callings.

Ob. It is Objected, the King canno
suppresse his Courts of Justice
and that this warre tended to the
suppression.

Sol. 7 pars The Ea le of Westmerlands Ca e. 1 Eliz. Dier. 265. 7 pars Cooke.

The answer is, the King cannot no
ought to suppresse Justice, or h
Courts of Justice, nor ever did; bu
Courts of Justice by *abuser or non us*
cease to be Courts of Justice; whe
Judges are made, and proceedings i
those Courts holden by others the
Judges made by the King, and again
his command under the great Seal
and his Majesty is not obeyed, bu
the Votes of the Houses, and h
Judges breaking that condition i
Law, of trust and loyalty, implyed i
their Patents, are no longer his Jud

The case of discontinuance of Processe.

ges;

...; they obey and exercise their pla-
... by vertue of Writs and Processes
...der a counterfet Seale : The King
...ly can make Judges, the twenty
...enth of *Henry* the eighth, Chapter
... twenty fourth, **Justices of the**
...ace, &c. The Kings Patent makes
...dges : The chiefe Justice of the
...ngs Bench is made by the Kings
...rit onely of all the Judges.

28 H. 8. Dier 11.

The **Great Seale** is the key of
... Kingdome, and meet it is that
... **King should have the key of**
... **Kingdome about him**; which
...nfutes their saying that the King got
... Seale away surreptitiously.

Articuli super chartas cap. 5. 2 pars instit. 552.

The King, and he only may remove
... Courts from *Westminster* into some
...her place : at *Yorke* the Tearmes
...re kept for seven yeares, in *Ed-*
...*ard* the first's time ; but for the
...urt of Common Pleas, the place
...st be certaine ; for the Kings
...ch and Chancery, the King by the
...w may command them to attend
... person alwaies if it seeme so
...eet unto him ; but the removing
... the Common Pleas must be to a
...ce certaine, and so notified to the
...eople.

Britton. fol. 23.

All the Bookes of Law in all times
...ree, that the King may grant conu-
sance

ſance of all Pleas at his pleaſure wi
in any County or Precinct to be h
den there onely, and remove
Courts from *Weſtminſter* to ſome ot
6 H. 7. 9. 6 Eliz. Dier. 226. place (for the Common Pleas, t
place muſt be certaine, and ſo not
ed to the people) and adjourne
Termes as he ſees cauſe: All wh
the two houſes have violated.

...ing objections of Ma... Prinn's, scattered in di... books answered, and the truth thereby more fully cleered.

THE first of *Henry* the fourth, revived the Statute of the eleventh of *Richard* the second, and repeales the one and twentieth of *Richard* the second, whereby certaine persons were declared Traytors to the King and kingdome; being of the Kings Party, by 11 *Rich.* 2. 1 *Ob.*

True, but note, the eleventh of *Richard* the second, a Parliament beset with 40000. men, and the King assents to it, so an Act, and besides the first of *Henry* the fourth declares, that the Treasons mentioned in the Act of the eleventh of *Richard* the second, being but against a few private men, shall not be drawne into example, and that no Treason should be but such as the twenty fifth of *Edward* the third declares: All these are Acts passed by the King, and the three Estates, nor to be drawne into example in a tumultuous time, by a besieged Parliament, with an Army, and *Sol.* 9 *Ed.* 4. *fol.* 80.

Henry

Henry the fourth being an Usur
makes that Act of the first of *Henry*
fourth to secure himselfe : Allow
is this to the Votes of the two Hou
onely at this time?

2. *Ob.* The Court of Parliament is abo
the King, for it may avoyd his Ch
ters, Commissions, *&c.* granted agai
the Law.

And the Law is above the King.

Sol. By the same reason you may
that the Courts of Chancery, or
of the Courts of Law at *Westmin*
are above the King, for they make
no effect the Kings Charters, wh
are passed against the Law; and t
King is subject to Law, and sworne
maintaine it. Againe, it is no Parl
ment without the King, and the K
is the head thereof, he is *princip*
caput & finis of a Parliament, as
this present Parliament, hath it,
two houses onely, want *principium*
pus & finis of a Parliament, and it
a sorry Parliament that wants
these: And therefore to say that Pa
liaments are above the King, is to s
the King is above himselfe.

3. *Ob.* The Parliament can enlarge
Kings Prerogative, therefore it
above him.

Sol. If the King assent, otherwise not
and

hen it is an Act of Parliament,
herwise no Act.

Bracton saith, God, the Law, and the 4 Ob.
g Court, (*viz.*) his Earles and Ba-
are above the King, *viz.* in Par-
ment, as Mr. *Prynne* expounds it.

where is then the House of Com- Sol.
? Indeed, take God, the Law,
Earles and Barons together, it is
; but to affirme that the Earles
Barons in Parliament are above
King (the King being the head of
Parliament, and they one of the
mbers) how an inferiour member
ove the head, is hard to conceive;
des, that position destroyes all Mr.
discourse, who attributes much
the House of Commons.

The King is but one of the three E- 5 Ob.
of Parliament, and two are grea-
then one; therefore above.

The Legs, Armes, and Trunke of Sol.
body are greater then the Head,
yet not above, nor with life with-
it; the argument holds for quan-
, but not for quality; and in truth,
King is none of the three Estates
above them all; the three Estates
the Lords Spirituall, the Lords
mporall, and the Commons; *Coke*,
Oracle, in his Chap. of Parl. *f.* 1
In Corporations, the greater num-

6 Ob. ber of voyces make all the Acts the Corporation valid; therefore in Parliament.

Sol. By this reason the Kings assent needlesse, and to no end: and all Acts of Parliament formerly mentioned, and Law-bookes have mistaken the matter, which with unanimous voyce requires the Kings sent as necessary: besides, the Corporations are so constituted by Kings Charters, and the greater number of Votes shall make their Acts valid.

7 Ob. The King, as King, is present his Parliament as well as in all other his Courts of Justice, howbeit he not there.

Sol. In his other Courts of Justice hath no voyce, he is none of the Judges, in the Parliament he hath; if presence be not necessary, his voyce not, nor his assent.

8 Ob. Soveraigne power of Parliaments, 46. 94. The originall prime legislative power of making Lawes, to binde the Subjects and their posterity, rests not the King, but in the Kingdome Parliament, which represents it.

Sol. Master *Prinne* in the leafe affirmes, and truly, the Kings assent is generally required to passe Lawes and ratifie them;

Ki

is the Head of the Kingdome and ment, how then can a Body act hout a Head?

A major part of a Corporation des, therefore the major part in liament, and so of by Lawes. 9 Ob.

The Corporation is so bound, ei- by the Kings Charters, or by pre- ption, which sometimes had the s concession; but prescription, d Law, and practise, alwaies left the a negative voyce. Sol.

The King cannot alter the Bills ented to him by both Houses. g°. 10 Ob.

True; but the King may refuse em. Sol.

Acts of Parliament and Lawes mi- ted in the Reignes of Usurpers, de rightfull Kings, g° 11 Ob.

What is this to prove the two Hou- power only, which is the question? King *de facto* must be obeyed by on who submitted to him, and they e his Subjects by their submission, d not Subjects *de facto* to the true g, and such being Traytours and ebells to the Regent King (having nounced the true King) when the full King is restored, may be pu- hed by him for their Treason a- inst the Usurper: But here is a ng still in both cases, and the pro- Sol. 9 Ed. 4.

ceedings at Law holds, the Judg
having their Patents from the be
Kings, in the Reignes of Kings,
facto or *de jure*; for all Kings
bound, and ſworne to obſerve t
Lawes.

12 *Ob.* A King dyes without Heire, is
Infant, *non compos mentis*, &c. t
two Houſes may eſtabliſh Lawes, &c.

Sol. There is no *Inter-regnum* in E
land, as appeares by all our Bookes
Law; and therefore the dying wi
out Heire is a vaine ſuppoſition,
by their principle he is conſider
in his politick capacity, which can
dye at all: The Protectour, aſſi
by the Councell of the King at L
his twelve Judges, the Council
State, his Attorney, Solicitor,
two Sergeants at Law, his two
Maſters of the Chancery, hath in
Kings behalfe, and ever had a Ne
tive Voyce; but what is this to t
preſent queſtion? We have a King
full age, of great wiſdome and judg
ment; the power of the two Hou
in ſuch a caſe to be over the King, c
not be ſhowne.

13 *Ob.* The King cannot diſaſſent to pu
lique and neceſſary Bills for the co
mon good, &c.

Sol. Nor ever did good King; but w

ll be judge, whether they be pub-
ue and necessary? The *major* part
either of the Houses, for passing of
ills so pretended, may be but one
two voyces, or very few, and per-
ps of no judicious men; is it not
n fitter or more agreeable to rea-
, that his Majesty and Councell of
e, his twelve Judges, his Serge-
s, Attorney, and Solicitor, twelve
sters of the Chancery, should judge
the conveniency and benefit of such
ills for the publick good, rather then
nor, (of which sort there may be
the Houses) or a weake man, or
few, who oftentimes carry it by
king the *major* part, which in-
ves the consent of all? Let reason
termine.

The Kings of *England* have been 14 *Ob.*
ective; and the King by his Coro-
tion Oath is bound to maintaine
as leges & consuetudines quas vulgus
erit, &c.

Popery hath been in the King- *Sol.*
me, and therefore to continue it
ill, will not be taken for a good ar-
ment; when things are setled
many ages, to looke back to times
confusion is to destroy all repose:
he Act of Parliament, of the first of
James, Chapter the first, and all our

extant Lawes say, that the Kings O
fice is an heritage inherent in t
bloud of our Kings, and their Birt
right.

1 Ed. 4. c. 1 And Usurpers that come in by t
consent of the people, are Kings
facto, but not *de jure*, as appeares b
the Acts of Parliament declaring the
so; and by all our Law-bookes, a
the fundamentall constitution of t
Land, Regall power is hereditary a
not elective.

1 Hen 7. For the words (*vulgus elegerit*)
vulgus be applyed to the Howse
Commons, they of themselves c
make no Lawes: The Peeres we
never yet termed *vulgus*; but allowi
they be so called, the Lawes to be ma
be just, and who is fit to judge there
of, is before made evident.

15 Ed. Customes cannot referre to futu
time, and both are coupled, Law
and Customes.

Princes have been deposed, a
may be by the two Houses, g^a

Sol. The deposers were Traytours
as appeares by the resolution of a
the Judges of *England*; *Coke*, Cha
Treason, in the second part of th
Institutes: And never was King de
posed but in tumultuous and m
times, and by the power of Armies
and

they who were to be the succeeding Kings in the head of them, *Edward* the third, and *Henry* the

The appeale to the Parliament for errours in Judgements in all Courts is 16 06.

This is onely to the House of Lords, and that is not the Parliament; the House of Commons have nothing to doe therewith; and in the House of Peeres, if a Writ of Errour be brought to reverse any judgement, then is first a Petition to the King for the allowance thereof, and the reason of the Law in this case is, for that the Judges of the Land all of them, the Kings Councell, and twelve Masters of the Chancery assist there, by whose advice erronious judgements are redressed. 17 06.

The Parliaments have determined the rights of Kings, as in *Henry* the fixts time, and others, and Parliaments have bound the succession of Kings, as appeares by the Statute of the thirteenth of Queene *Elizabeth*, chapter the first: And the discent of the Crowne is guided rather by a Parliamentary Title then by common

If this objection be true, that the

Title to the Crowne is by Parli-
ment, then we had no Usurpers, f
they all had Parliaments to back
them; yea, Richard the third, th
Monster. All our Bookes of La
say they have the Crowne by discen
and the Statutes of the Land declar
that they have the same by inhere
birth-right. And the Statute of th
thirteenth of Elizabeth, the fi
Chapter, was made to secure Quee
Elizabeth against the Queene o
Scots, then in the Kingdome, cla
ming the Crowne of England, a
having many adherents: And th
Statute to that end affirmes no fu
power in the two Houses (which i
the question) but in Queene Eliz
beth, and the two Houses, whic
makes against the pretence of th
time.

Master Wynne, *fol.* 104 of hi
booke, intituled, the Parliament
supreme power, &c. Objecting th
Statute of the first of Queene Eliz
beth, and his owne Oath, that th
King is the onely supreame Gove
nour of this Realme; Answers, The
Parliament is the supreme power, an
the King supreme Governour: And
yet there he allowes him a Negat
ive Voyce; and *fol.* 107. confesseth,
that

that Acts of Parliament translated the Crowne from the right Heires at Common Law, to others who had no good Title, then the Parlimentary Title makes not the King, so powerfull in truth, that it escapes from a man unawares: To make a distinction betweene supreame Governour, and supreame power, is very strange, for who can governe without power?

The King assembles the Parliament by his Writ, adjournes, prorogues, and dissolves the Parliament, by the Law at his pleasure; as is evident by constant practise, the House of Commons never sate after an adjournement of the Parliament by the Kings Command: Where is the supreame power? Vide *Speep.* 645. 4. par. Instit. 27. & 2.

The King by his Oath is bound to deny no man right, much lesse the Parliament, to agree to all just and necessary Lawes proposed by them to the King. This is the substance of the discourse against the Kings Negative voyce. 18 *Ob.*

The King is so bound as is set downe in the Objection; but who shall judge whether the Bill proposed be just and necessary? For all that they do propose are so pretended and *Sol.* 15

carried in either House, sometim
by one or two Voyces; or some se
as aforesaid, and certainly it ha
been shewen, the King, his Cou
sell of State, his Judges, Sergean
Attorney, Solliciter, and twel
Masters of the Chancery can bet
judge of them, then two or three,
few more.

Mr. Prynne, *fol.* 45. In his Boo
of the Parliaments interest to nom
nate Privy Councellors, calleth t
opinion of the Spencers to dra
the Person of the King from
Treason, a strange opinion, a
cites Calvins Case, but leaves
the conclusions therein mentioned
fol. 11. Master Prynne saith ther
But let this opinion be what it wi
without the Kings Grace and Pard
it will goe very farre, and two Acts
Parliament there mentioned are be
yond an opinion: And in his Book
the opening of the Great Seale, *fol.* 1
The Parliament hath no jurisdiction
use the Great Seale for Pardons Ge
nerall or Particular. Where is th
supreme power then?

Calvins case 7 part, fol. 11.

19, 08.

Mr. Prynnes (opening of th
Seale) pag. 19. saith, the Noblem
and State, the day after the Funer
of King Henry the third (King

Fr

[illegible]) the first his Sonne being in the Holy Land) made a new Great Seale, and Keepers of the same; And in Henry the sixts time, in the first yeare of his Reigne, the like was done in Parliament.

A facto, ad jus, is no good Argument, for that in Edward the firsts time it was no Parliament, for King Henry the third was dead, which dissolved the Parliament, if called in his time, and it could be no Parliament of Edward the firsts time, for no Writ issued to summon a Parliament in his Name, nor could issue but under that New Seale, it was so suddainely done after Henry the thirds death, King Edward the first being then in the Holy Land, it was the first yeare of his Reigne, and no Parliament was held that yeare, nor the second yeare of his Reigne: The first Parliament that was in his Reigne, was in the third yeare of his Reigne, as appeares by the printed Acts: Also the making of that Seale was by some Lords then present; What hand had the Commons in it? Concerning the Seale made in Henry the sixths time, the Protector was Vice-Roy according to the course of Law, and so the making

Sol.

of

of that Seale was by the Protect
in the Kings name, and that Prote
ctor, Humphrey Duke of Glou
cester, as Protectour, in the King
Name summoned that Parliament
and was Protector made by the Lord
and not in Parliament, as appeare
plainely, for that Parliament w
in the first of Henry the sixth, a
the first holden in his time, a
power given by Commission to th
said Duke, then Protector, to sum
mon that Parliament, Prynne, ibi
fol. 19. But the new counterfeit Sea
was made when the King was at D
ford, in his owne Kingdome, and no
in the holy Land.

20 Ob. Mr. Prynne in his Booke of th
two Houses power to impose Taxe
restraines Malignants against any Ha
beas Corpus, &c. saith, that the Par
liament is above *Magna Charta*, an
fol. 15. *ibid.* The Parliament hath po
wer over *Magna Charta* to repeale th
same when there is cause.

Sol. This Argument supposeth th
they have the Kings power, whic
hath appeared formerly they hav
not: But suppose they had, *Mag*
Charta containes many Morall Lawe
which by the Law of the Land
Parliament cannot alter, 21 H. 7. 2.

D

by any Statute, 2 Dialogue. For example, it saith cap. 11. Justice shall not be sold, delayed, nor denyed to any man; but by this Argument the Parliament may make Law to delay, deny, and to sell Justice, which surely is a very ill position to maintaine.

What they would have, doth now by the Propositions sent to Newmarket to his Majesty appeare, whereby they would have him divest himselfe, and settle in them all his Kingly power by Sea and Land, and of themselves to have power, without him, to lay upon the people of this Land what taxes they thinke meet, to abolish the Common prayer-booke, to abolish Episcopacie, and to introduce a Church Government not yet agreed, but such as they shall agree on.

His Majesty finding a prevailing party in both Houses to steere this course, and being chased away with Tumults from London, leaves the Houses for these Reasons, (viz.)

First, because to alter the Government for Religion, is against the Kings Party.

Secondly, against their Oaths: For every of them hath sworne in this Parliament, That His Majesty is

is the onely supreme Governour in
Causes Ecclesiasticall and over
persons.

Thirdly, this course is again
Magna Charta, the 1. Chap. and th
last. *Salve sint Episcopis omnes liber*
les sue, Confirmed by thirty two A
of Parliament; and in the two an
fortieth of Edward the third, th
first Chapter enacts, if any Statute b
made to the contrary, it shall be hol
den for none: and so it is for judge
ments at Law, in the 25 of Edwar
the 1. chap. 1. 2. The great Charte
is declared to be the Common Law o
the Land.

Fourthly, they endeavour to tak
away by their Propositions, the Go
vernment of Bishops, which is a
ancient as Christianity in this Land
and the Books of Common praye
settled by five Acts of Parliament
and compiled by the Reformers and
Martyrs, and practised in the time
of four Princes.

Fifthly, these Propositions taking
away from his Majesty all his power
by Land and Sea; rob him of that
which all his Ancestors, Kings of this
Realme, have enjoyed: That enjoy-
ment and usage makes the Law, and
a right by the same to his Majesty.

The

They are against their owne Proclamation made this Parliament, (viz.) to maintain his Royall Person, Honour, and Estate; They are against their Covenant, which doth say, that they will not diminish his just power and Greatnesse.

For these reasons his Majesty hath left them, and as is beleeved, will refuse to agree to the said Propositions, as by the fundamentall Law of the Land he may (having a Negative Voice) to any Bils proposed.

The result of all is upon the whole matter: That the King thus leaving of the Houses, and his deniall to passe the said Propositions, are so far from making him a Tyrant, or not in a condition to governe, at the present; that thereby he is rendred a Just, Magnanimous, and Glorious Prince: so that by this it appeares clearely to whom the Miseries of these times are to be imputed. The remedy for all, is, an Act of Oblivion, and a Generall Pardon.

God save the King.

DAVID JENKINS, *now Prisoner in the Tower.*

28 *Aprilis*, 1647.

The

The Vindication of Iud
Jenkins Prisoner in the Tower, the 29. of April, 1647.

I Was convened upon Saturday t
10 of this moneth of Aprill befo
a Committee of the House
Commons, wherein Master C
bet had the Chaire; and I was th
to be examined upon some questi
then to be propounded to me; t
which questions I refused to give
ny other answer then that which w
set downe in a paper I then deliver
to the said Mr. Cuthet, which follo
eth in these words:

Gentlemen, I stand committed
the House of Commons for
Treason, for not acknowledging
you obeying the power of
two Houses, by adhering to
King in this Swares. I deny th
to be Treason, for the supreme
and onely power by the Law
of this Land, is in the King: If I
should submit to any examinatio
derived from your power, which
by the Negative Oath stands in
opposition to the Kings power, I
should

[illegible] confesse the power to be in [illegible], and so condemne my selfe for a [illegible], which I neither ought [illegible] will do.

I am sworne to obey the King, [illegible] the Lawes of the Land; you [illegible] not power to examine me by [illegible] Lawes, but by the Kings [illegible], Patent, or Commission; [illegible] can produce either thereof, [illegible] will answer the questions you [illegible] propound; otherwise I can[illegible] answer thereto, without the [illegible]ach of my Oath, and the viola[illegible] of the Lawes, which I will [illegible] do to save my life.

You your selves, all of you this [illegible]liament, have sworne that the [illegible] is our onely and supreame [illegible]; your Protestation, [illegible] Bow and Covenant; your [illegible] League and Covenant, [illegible] Declarations, all of them [illegible] to the Kingdome, that [illegible] scope is the maintenance of [illegible] Lawes; those Lawes are and [illegible] be derived to us, and enlive[illegible] by the onely supreame Gover[illegible], the Fountaine of Justice, [illegible] the life of the Law, the King. [illegible] Parliaments are called by his [illegible], the Judges sit by his Pa-

tents

tents, so of all other Officers, th
Cities and Townes corporate, ge
verne by the Kings Charters; an
therefore since by the Law I can
not be examined by you, withou
a power derived by his Majesty,
neither can, nor will, nor ou
you to examine me upon any
stions. But if as

IRREGULAR

that Recantation, and to pu
the world the realty of the Pap
then delivered to Mr. Corbet and
the matter therein contained, I have
published this ensuing discourse.

No person who hath committed
Treason, Murder, or Felony,
hath any assurance at all for so much

as

one houre of life, Lands or Goods, without the Kings gratious par=
[illegible], 27. Hen. 8. cap. 24.
The King is not virtually in the two Houses at Westminster, whereby they may give any assurance at all, to any person, in any thing, for any such

[illegible] House of Commons have

PAGINATION

[illegible] and purposes as if he [illegible] been elected or returned, if before he sit in the House, he take not his Oath upon the holy Evangelists, that the Kings Majesty is the only and supreame Governour over all persons in all Causes. All the Members of the said House have taken

tents, so of all other Officers, [illegible]
Cities and Townes corporate, [illegible]
berne by the Kings Charters; [illegible]
therefore since by the Law I [illegible]
not be examined by you, [illegible]
a power derived by his Majesty, [illegible]
neither can, nor will, nor [illegible]
you to examine me upon any [illegible]
stions. But if as private Gen[illegible]
men, you shall be pleased to [illegible]
me any questions, I shall re[illegible]
and truely answer every such [illegible]
tion, as you shall demand.

April 10. 1647. *David Jenkins*

This Paper hath beene mis-repre[illegible]
sented to the good people of this C[illegible]
ty by a printed one, stiling it my Re[illegible]
cantation, which I owne not; and be[illegible]
sides is in it selfe repugnant (just like[illegible]
these times) the Body fals out with[illegible]
the Head. To vindicate my selfe from[illegible]
that Recantation, and to publish to[illegible]
the world the reality of the Paper[illegible]
then delivered to Mr. Cobet and[illegible]
the matter therein contained, I have[illegible]
published this ensuing discourse.

No person who hath committed [illegible]
Treason, Murder, or Felony, [illegible]
hath any assurance at all for so much

as

one houre of life, Lands or Goods, without the Kings gratious par-
ton, 27. Hen. 8. cap. 24.

The King is not virtually in the Houses at Westminster, whereby they may give any assurance at all, to any person, in any thing, for any such offence.

1. The House of Commons have declared to the Kingdome in their declaration of the 28 of November last, to the Scots Papers, p. 8. That the King at this time is not in a condition to governe. No person or thing can derive a vertue to other men, or things, which it selfe hath not; and therefore it is impossible that they should have a vertue from the King to govern, which they declare he hath not himselfe to give.

2 The Law of the Land is, That no person in any Parliament hath a voyce in the House of Commons, but that he stands a person to all intents and purposes as if he had never been elected or returned, if before he sit in the House, he take one his Oath upon the holy Evangelists, that the Kings Majesty is the onely and supreame Governour over all persons in all Causes. All the Members of the said House have taken

5 Elizab. cap. 1.

taken it, and at all times as they are returned do take it; otherwise they haye no colour to intermeddle with the publick Affaires. How doth this Solemne and Legall Oath agree with their said Declaration, **That the King is in no condition to govern?** By the one it is sworne, he is the only supreme Governour; by the other that he is not in a condition to governe.

3. The Oath is not, that the King was, or ought to be, or had been, before he was seduced by ill Councell, our onely and supreame Governour in all Causes, over all persons; but in the present tense, **that he is our only and supream Governour**, at this present, in all causes and over all persons. So they the same persons swear one thing, and declare to the Kingdome the contrary of the same thing, at the same time, in that which concerneth the weale of all this Nation.

4 The Ministers in the Pulpits do not say, what they swear in the House of Commons. Who ever heard fithence this unnaturall Warre, any of their Presbyters attribute that to his Majesty which they sweare? The reason is, their Oath is taken at **Westminster** amongst themselves: that which

their

their Ministers pray and preach, goes through the people. To tell the people that the King is now their only supreame Governour in all Causes, is contrary to that the Houses doe now practise, and to all they act and maintaine. They, the two Houses both, are the only and supreame Governours in default of the King, for he hath left his great Councell, and will not come to them, and yet the King desires to come, but they will not suffer him, but keepe him prisoner at Holmby: so well doe their Actions and Oathes agree.

They sweare now, King Charles is their only and supreame Governor; with a resolution at the time of the Oath taking, and before and after, that he shall not be only or supreame Governour, or only and supreame, but that any Governour at all: For there is no point of Government, but for these yeares past they have taken to themselves, and used his name only, to abuse and deceive the people.

6. That this virtuall power is a meere fiction, their Propositions sent from Oxford to Newcastle, to be signed by the King, doe prove it so. What needs this, doe, if they have the virtuall Power with them at Westminster?

7. To

7. To affirme that the Kings po-
wer (which is the vertue they talke of
is separable from his person is Hig
Treason by the Law of the Land
which is so declared by that learne
man of the Law, Sir Edward Cock
so much magnified by this presen
Parliament, who in the 7 part of hi
Reports in Calvins case, fol. 11 said
thus. In the reigne of Edward th
second, the Spencers, the Fathe
and Sonne, to cover the Treaso
hatched in their hearts invente
this damnable and damned opini-
on, that homage and Oath of Lege-
ance was more by reason of th
Kings Crowne, (that is of his po-
titick capacity) then by reason o
ohe person of the King upon whic
bpinion they inferred three execra-
ble and detestable consequences
h. If the King do not demean
himselfe by reason in the right o
his Crowne his Lieges are bound
by Oath to remove the King. 2 sa-
ing that the King could not be re-
formed by sute of Law, that ough
so be done per aspertes that is by
force 3. That his Lieges be bound
to governe in ayde of him, and in
default of him; all which were con-
demned by two Parliaments, one
in

the raigne of Edw. 2. called exi-
[illegible] Hugonis le Spencer; and the other
[illegible] anno 1. Edw 3 cap. 2.

And that the naturall body and poli-
[illegible] maks one indivisible body, & that
[illegible] two bodies incorporate in one
person make one body and not divers,
resolved as the Law of Eng. 4 El 3.
Pleydon Com. fol. 213 by Sir Cobet
Catlin L. Chiefe Justice of Eng. Sir
James Dier, L. Chief Justice of the
Common pleas, the L. Sanders, L.
Chief Baron of the Exchequer, & by
the rest of the Judges, viz. Justice Re-
[illegible], Justice Browne, Justice Cor-
[illegible], Justice Weston, Baron Frevyll,
Carus and Powrell, Sergeant to
the Queene, Gerrard Auturny Gene-
rall; Carell Atturney of the Dutchy;
Plowdon the learnedest man of that
age, in the knowledge of the Law and
Customes of the Realme.

8. The Law in all ages without a-
ny controversie is and hath beeu: that
no Act of Parliament bindes the
Subjects of this Land without
the assent of the King, either for
Person, Lands, Goods, or Fame.
No man can shew any sillable, letter,
or line to the contrary in the bookes
of the Law, or printed Acts of Parlia-
ment, in any age in this Land: If
the

9 Hen. 3 Magna Charta. So in every Age till this day, and in every Kings time, as appeares by the Acts in Print,

the virtuall power be in the Hous
there needs no assent of the King
The stiles of the Acts printed fro
9 Hen. 3. to 1 Hen. 7. were eithe
The King ordaines at his Parli
ment, &c. or: the King ordaineth
the advice of his Prelates and
rons, and at the humble Petit
of the Commons, &c. In Hen.
his time the Stile altered, and ha
sithence continued thus; It is
dained by the Kings Majesty, a
the Lords Spirituall and tempora
and Commons in this pres
Parliament assembled: So that
wayes the Assent of the King give
the life to all, as the soule to the bo
dy; and therefore our Law book
call the King, the Fountaine
Justice, and the life of the Law.

1 part of the Instit fol. 234. in fine where many of the Law-Bookes are cited.

7 Hen. 7. 14. 12. of Hen. 7. 20.

2 Hen. 4 Cap 22
4 pars instit. 42.

9. Mercy as well as Justice be
longs by the Law of the Land one
to the King. This is confessed b
Mr. Dyer, and it is so without an
question: The King can onely pa
don, and never more cause to ha
sufficient pardons then in such tro
blesome times as these, and God se
us pardons and peace: None ca
give any pardon, but the King by th
Law of the Land: The whole an
sole power of pardoning Treas
and

Mr. Prin in his Treatise of the Fourth Inst. fol. 17. 27. Hen. 8. Chap. 24.

[illegible] belongs to the King [illegible] of the Law, and it is [illegible] to take it from any other and [illegible] invalid. 27 Hen. 8. c. 24. [illegible]

Queene Elizabeth summons [illegible] first Parliament, to bee held [illegible] of Jan. in the first yeare of her [illegible] Reigne: The Lords and [illegible] assembled by force of the Writ, the 21 day the Queen fell [illegible] and could not appeare in her per- in Parliament that day, and there- prorogued it untill the 25 of the Month of January: Resolved all the Judges of England that [illegible] Parliament began not the day of the returne of the Writ, viz. the of January, when the Lords Commons appeared, but the of the said Moneth when the Queene came in person: which with evidently that this virtuall [illegible] is a meere deluding fiction hath no ground in Law, reason, sence. They have the King now a [illegible] at Holmby, with guards up- him, and yet they governe by the [illegible] power of their prisoner. [illegible]ese are some few of the causes and [illegible]sons which moved me to deliver [illegible] paper to Mr. Cozbet, which I [illegible] ready to justifie with my life, and

1 of Eliz. Dier. 293.

should hold it a great honour to
for the honourable, and holy Laws
the Land: that which will save
Land from destruction, is an *Act*
Oblivion, and his Majesties gracious
nerall pardon, the Souldiers their
rears, and every man his own, and tr
and Peace established in the Land, a
favourable regard had to the satisfa
of tender Consciences.

April 29. 1547.

David Ienkins.

THE
ARMIES
INDEMNITY,

WITH ADDITION;

Together with a

DECLARATION

SHEWING,

How every Subject of ENGLAND ought to be tried for Treasons, Felonies, and all other Capital Crimes, as is set down in the Lawes of the LAND.

By DAVID IENKINS; now Prisoner in the Tower of *London*.

Printed in the Yeare, 1648.

The Armies Indemnity, &c.

UPon the publiſhing of the Ordinance of the 22 of May laſt, for the Indemnity of the Army, certaine Gentlemen well affected to the peace of the Kingdome, and ſafety of the Army, deſired mee to ſet down in writing, whether by the Law of the Land, the ſaid Ordinance did ſecure them from danger, as to the matters therein mentioned: For their ſatisfaction in a buſineſſe wherein the lives and fortunes of ſo many men were concerned, and the peace of the Kingdom involved, I conceived I was bound in duty and conſcience, faithfully and truly to ſet down what the Law of the Land therein is; which accordingly I have with all ſincerity expreſſed in this following diſcourſe.

The danger of the Armie by the Law of the Land is apparent to all men: It is high Treaſon by the Law of the Land to levy warre againſt the King, to compaſſe or imagine his death, or the death of his Queene, or

25 Ed. 3. c. 2.
2 R. 2. c. 3.
1 H. 4. c. 10.
1 & 2. Ph. & Mar. c. 10.

of his eldeſt Sonne, to counterfe
his Money, or his great Seale; Th
are the very words of the Law: O
ther Treaſons, then are ſpecified in th
Act, are declared to be no Treaſo
untill the King and his Parliame
ſhall declare otherwiſe, they are t
very words of the Law. King a
Commons, King and Lords, Co
mons and Lords, cannot declare a
other thing to be Treaſon, than the
is declared; as appeares by the Lo
Cook, in the places cited in the Margi
A Law-book publiſhed by order
the Houſe of Comons this Parliamen
as appears in the laſt leafe of the
part of the Inſtitutes, publiſhed lik
wiſe by their Order.

3 Pars inſt. p. 22. & 2 pars inſtit. pag. 47, 48. & 4 pars inſtit. p. 23. 48. 29.

3 pars inſtit. cap. Treaſon, p. 9, 10, & 12.

The Reſolutions of all the Iu
ges of England upon the ſaid Sta
tute of the 25 *Edward* 3. (as a
peares in the ſaid third part of the I
ſtitutes, *Chap.* High-Treaſon) ha
been, that to impriſon the King t
till hee agree to certaine demands
High-Treaſon; to ſeize his Port
Forts, Magazine for Warre, are Hig
Treaſon; to alter the Lawes is Hig
Treaſon.

Mr. S. Iohn the Sollicitor in his ſpeech upon the Araignment of the Earle of Strafford Printed by order of the Houſe of Commons p. 23.

The word King in the Statute o
25 *Edw.* 3. *c. p.* 2. muſt be underſtoo
of the Kings naturall perſon; for tha
perſon

[illegible] can only die, have a Wife, have [illegible], or be imprisoned.

The Priviledge of Parliament pro- [illegible] no man from treason or felony, [illegible] he be a Member; much lesse [illegible] they protect others: Those who [illegible] protect themselves, have no [illegible] to make Ordinances to protect [illegible] who are no Members.

4 pars insti. c. Parl. p. 25.

The Statute of 11 *Hen.* 7. *c.* 1. doth [illegible] expresse words free all persons who [illegible] to the King.

11 H. 7. c. 1.

The Army by an Act of Indemni- [illegible] free themselves from all those dan- [illegible], which an Ordinance can no more [illegible] than repeale all the Lawes of the [illegible], the whole and sole power by [illegible] to pardon all Treasons, Felonies, [illegible] being solely and wholly in the [illegible], as is cleared by the Statute of 27 [illegible] 8. c. 24. and the Law of the Land [illegible] all times.

Stamfo d. l. 2. fol. 99. 18 Ed. 3. Statutes at larg 144. 20 Ed. 3. c. 1. 11 Ric. 2. c. 10. 4 pars instit. pag. 23. 48. 29.

Having shewed the danger of the [illegible] by the Law of the Land, next [illegible] the Ordinance of the [illegible] and Commons published the [illegible] of May last for their Indemnity; [illegible] the ensuing discourse it doth ap- [illegible] they have no Indemnity at all [illegible].

The Indemnity proposed by the Ordinance, is for an Act done by the

authority of the Parl. or for the serv
or benefit thereof; and that the Jud
and all other Ministers of Justice sh
allow thereof.

This Ordinance cannot secure
Army for these reasons.

3 Pars inst. p. 21.
2 pars inst. 47. 48.
1 pars. inst. 193.
Princes case 8. reports.

1. Their Judges are sworne to d
justice according to the Law of t
Land, and therefore the Judges m
be forsworne men if they obey it; b
cause an Ordinance of both Houses
no Law of the Land, and no man c
believe they will perjure themselves
palpably and visibly in the eye of th
World.

Magna Charta cap. 29.
25. Ed. 3. c. 4.
28 E. 3. c. 3.
37. Ed. 3. c.
42 Ed. 3. c. 3.

2. All tryals for treasons, felonie
robberies, and such like capitall offe
ces, are by the Law of the Land to b
by indictment of a Jury appointed o
of the Neighbourhood where the o
fence was done; there is no comm
Jury-man but understands what th
Law is in these cases as well as the be
Lawyers, and the Law makes the Jur
Judges of the fact, whereby the souldie
is left to their mercy whom he hath o
fended (as some of them have latel
had wofull experience, and thereupon
doe rightly apprehend their danger)
Now no man can think that the Juror
will perjure themselves to acquit the
souldiers for robbing and plundring

Declaration of the Army presented at Walden, and printed by the appointment of the Officers subscribed.

of

of the Countryes, and thereby utterly destroy their own Rights and Properties.

3. If the Judges conceive (as they may) that the taking of other mens horses or goods, is not by the Authority of Parliament, or for the service and benefit thereof, the souldier dies for it; they may say to steale or rob any man of his goods is not for the Parliaments service, but against it, which was always the sense of the people, and doubtlesse the Jurors will not think otherwise.

4. This Ordinance is restrained to the authority, service or benefit of the Parliament. the Lords and Commons make no more a Parliament by the Law of the Land than a body without a head makes a man; for a Parliament is a body composed of a King their head, the Lords and Commons the members. All three together make one body, and that is the Parl. and no other, and the Iudges may, ought, and I believe wil according to their oathes proceed as not bound at all by this Ordinance. For it is restrained to the authority of Parliam. service or benefit thereof, whereas the two Houses are not the Parl. bur onely parts thereof, and by the abuse and misunderstanding

4 Pars inst. p. 1.
3 pars inst. p. 22.
1 pars. inst. p. 1.
28 H. 8. f. 11. Dier 38 H. 8. fol. 60.
12 H. 7. 20.
1 pars instit. 159.
Princes case 8 Reports.

ding of this word *Parliament*, th
have miserably deceived the people.

28 Aug. 1642. Col. of Ord. first part, 565. 592. 605. severall Ordinances.

5. This Ordinance is against the Ordiinance which expresly prohib plundring, and so there is one Or nance against another, whereby th Judges have an out-let to proceed the one or the other, and thereby t Army hath no manner of security.

1 Pars inst. 109. 1 pars instit. 110. 4 Pars p. 49.

6. The word Parliament is a Frenc word (howbeit such Assemblies we before the Norman Conquest heere and signifies in that language to co sult and treat; that is the sence of t word *Parler* in the French Tongu The Writ whereby the two Hous are assembled, which is called the Wri of Summons of Parliament, at a times, and at this Parliament used and which is the warrant, ground an foundation of their meeting, is fo the Lords of the House of Peeres, th Iudges and Kings Counsell to con sult and treate with the King (that i the *Parler*) of great concernments touching, 1. the King, secondly, the de fence of his Kingdome, thirdly, th defence of the Church of England. I cannot be a Parliament that will no parle with their King, but keepe him in prison, and not suffer him to come to them and parle, and therefore the

Law

law, and ſenſe, and reaſon, informe every man that is no manner of liament) the King with whom y ſhould parle being ſo reſtrained they will not parle with him) the y hath no manner of ſecurity by Ordinance, for their indemnifica- refers to that which is not in be- untill the King be at Liberty.

7. It is more than probable that their Iudges before the laſt Circuite al inſtructions to the effect of this Ordinance ; but they the Iudges ma- conſcience of their Oath, layd ide the ſaid inſtructions, and ought, and may, and it is believed will no more regard this Ordinance, than the ſaid inſtructions : What was done in the laſt circuit the army well knowes, touching many of their fellow-Soul- diers.

The Common ſouldiers ſecond Apology. 6. Grievances of the Army publiſhed 15. May laſt. Three grievances of Col. Riches Regiment.

8. The H uſes in their firſt propoſition to his Majeſty for a ſafe and well-grounded peace, ſent to Newcaſtle to deſire a pardon from his Majeſty for themſelves : they who deſire a pardon, cannot granr a pardon (comon reaſon dictates this to every man) and therefore that the army ſhould accept an indemnity for them, who ſeek it for themſelves, or ſhould conceive it of any manner of force, is a fancy ; ſo that no

man

man in the whole army, but may apprehend, that it is vain and a meer delusion.

9. His Majesty by his gracious message of the 12 of *May* last, hath offered an Act of Oblivion, and a generall pardon to all his people, this done the Law doth indemnifie the Army (without all manner of scruple) for any thing that hath been done; for it is an Act of Parl. when the King & two houses concur, and bindes all men. There is no safety by the Ordinance; there is safety by an Act of Parliament: and will not reasonable men preferre that which is safe before that which is unsafe.

10. His Majesty by his said Letter grees to pay the arrears of the army; I am sure that it is a publick debt, and the chiefest and the first that by the two Houses should be paid, and before any dividend or gratuities bestowed amongst themselves: for their blood, limbs, and lives have put and kept the both Houses at rest in the power they have: So by this concurrence of his Majesty for your indemnity, and for your arrears the Army have not an Ordinance, but the Rublick Faith, but the Law of the Land to make sure unto them their indemnity for all acts, and for their arrears, and therewith also bring peace to the Land.

11. Th

11. The Kingdom and people generally desire these things. To such an army just and reasonable things must not be denyed; the things formerly proposed are most just and reasonable, you may have them if you will, if you will not, you render this Kingdom miserable, wherein you will have your share of miseries: the head and the body are such an incorporation as cannot be dissolved without the destruction of both.

The additionall Ordinance of both Houses passed the 5. of *June* instant for the fuller indemnity of the Army, makes nothing at all to the matter. 1. For that it extends not to Felony, Homicide, Burglary, Robbery, or any other cappitall crime, which is the main businesse insisted upon, and most concerneth the Souldiers security.

12. The both Houses in the said additional Ordinance say, that it is expedient that all offences be pardoned and put in oblivion, pardon and oblivion cannot be understood to be for a time, but for ever; and they themselves confess that an Ordinance is not binding but *pro tempore*, which with the most advantagious interpretation can be but a reprive or delay of the execution of the Law, and therefore that cannot pardon or put in oblivion by their own shewing.

Mr. Pyms Speech against the Earl of Strafford. p. 16. Six considerations printed by the command of the House of Commons.

But

27 H. 8. c. 24. But the Law of the Land is, (and it hath constantly been practised in times) that no persons of what estate soever, have any power to pardon treason, felony, or any other offences but the King only, who hath the sole and whole power to pardon all such crimes whatsoever. And in the same manner an Ordinance is of no authority at all to take away the right of private men's actions, by any evidence it can give; the truth all the evidence that this Ordinance gives is, that it records to posterity nothing but a lawlesse and distempered time.

For remedy thereof I say again, it is certaine truth, this Kingdom without an act of Oblivion, and a generall pardon, and the paym nt of Souldiers arrears, and due meet regard had to tender consciences, will unavoydablybe ruined.

June 10. 1647.

DAVID JENKINS
Prisoner in the Tower
of *London*.

Sundry

...ndry Acts of Parliament ...entioned and cited in the ...rmies Indemnities, set forth in words at large for the better satisfaction of such as desire rightly to be informed.

25. Edw. *Chap.* 5.

A Declaration what offences shall be adjudged Treason.

WHereas divers opinions haue been before this time, in what case Treason shall be said, and in what not: The King at the request of the Lords and of the Commons hath made a Declaration in the manner as hereafter followeth: That

That is to say, When a m
doth compasse, or imagine
death of our Lord the King,
of our Lady the Queen, or
the eldest Son and Heire: or
violate the Kings compani
or the Kings eldest Daugh
unmarried, or the Wife of
Kings eldest Son and Heire;
if a man do leavy War aga
the Lord our King in his Real
or be adherent to the Kings e
mies in his Realm, giving
them ayd and comfort in
Realm, or else-where, and ther
of be probably attainted of op
deed by people of their condit
And if a man counterfeit
Kings great or privy Seal,
his Mony: and any man br
false mony into this Real
counterfeit to the mony of Eng
land, and the mony called Ster
burgh, or other like to the la
mony of England, &c.

11. Hen.

11. Hen. 7 *Chap. 1.*

[illegible] that shall attend upon the King, and do him true service, shall be attainted or forfeit any thing.

THE King our Soueraign Lord calling to remembrance [illegible] duty of Allegiance of his [illegible] of this his Realm, and [illegible] they by reason of the same [illegible] to serue their Prince [illegible] Soueraigne Lord for the [illegible] being in his Wars, for the [illegible] of him and the land, a[illegible] euery rebellion, power, & [illegible] raised, reared against him: [illegible] with him to enter and abide [illegible] in battell, if case so re[illegible], and that for the same ser[illegible] what fortune euer fall by [illegible] in the same battel against [illegible] mind and will of the Prince [illegible] in this land sometime passed [illegible] been seen) that it is not rea[illegible]able, but against al laws, rea[illegible] & good conscience, that ẏ said subiects going with their Soueraign Lord in Wars, attending upon him in his person, or being

in

in other places by his cõmand
ment within this Land or with
out, any thing should lose or for
feit, for doing their duty in ser
uice of Allegiance. It be there
fore ordained, enacted, and esta
blished by the King our Sou
raign, by the advice and assent
his Lords Spirituall and Tem
porall and the Commons in th
present Parliament assembled
and by authority of the same, tha
from hence forth no manner
person or persons whatsoeuer
or they be that, attend upon th
King and Soueraign Lord
this land for the time being,
his person, and do him true an
faithfull seruice of Allegiance
the same, or be in other places by
his commandement in his
wars within this land; or with
out, that for the said deed and
true duty of Allegiance, he or
they be in no wise conuict or at
taint of high treason nor of other
offences for that cause, by Act
of Parliament, or otherwise
by any processe of Law, whereby
he or any of them shal lose or for
feit

[illegible] lands, tenements, rents, [illegible] heriditaments, [illegible] chattels, or any other [illegible], but to bee for that [illegible] and service utterly dischar, [illegible] of any veration, trouble, or [illegible]. And if any Act or Acts, or [illegible] process of the Law here[illegible] thereupon for the same, [illegible] to be made contrary to [illegible] Ordinance, that then that [illegible] or Acts, or other process of [illegible], whatsoever they shall. [illegible], shall bee utterly voyd [illegible] alwaies, that no per[illegible] or persons shall take any [illegible] or aduantage by this [illegible] which shall hereafter decline [illegible] his or their said Allegi[illegible].

Cap. 24. In the Statute of 27. [illegible] 8. It is enacted that no per[illegible] or persons of what estate or [illegible] soeuer they be of, shall [illegible] any power or authority [illegible] pardon or remit any Trea[illegible], Murders, Man slaugh[illegible], or any other Felonies, [illegible]. but that the King shall haue the

the sole and whole power a
authority thereof united &
to the Imperiall Crown, as
right it appertaineth, &c. And
the same Statute it is enacted fu
ther, That none shall have pow
of what estate, degree, or con
tion soever they be to make J
stices of Eyre, Justices of A
size, Justices of Peace, &c. but
such Officers and Ministers
be made by Letters Patent
under the Kings great Seal
the name and by the authority
the King and his Heires & Su
cessors Kings of this Realm.

In the first year of Queen Mar
and the first Chapter, It is en
ed by the Queen, with the co
sent of the Lords & Commons
That no deed or offence by any
Parliament made treason, shal
be taken deemed, or adjudged
be high Treason, but only suc
as be declared, and expressed
be Treason by the Act of Par
liament made 25. Ed cap. 2. before
mentioned.

A

Declaration of Mr. *David* [illegible], now Prisoner in the Tower of *London*, one of His Majesties Judges in *Wales*, for Tryals of Treasons, Murthers, Felonies, and all other capitall crimes, that they ought only to be by Juries, and not otherwise, unless it be by Act of Parliament.

THe Common Law of this Land is, that every Freeman is subject to a tryall by bill of Attainder in Parliament wherein His Majesty and both Houses must necessarily concur, for that tryall and attainder is an *Act of Parliament* to which all men are subject to.

a No man shall otherwise be destroyed, &c. but by the lawfull judgement of his Peers, or by the common Law of the Land. Peeres to Noblemen are Noblemen, Peeres to the Commons are Knights, Gen. &c. Judgement

a Mag. Charta, 29. 2 part. inst. fol. 28, 29. 46, 48, 49. 50, composed by Sir Ed. Cook and published by the Order of the House of Commons in May 1641. 4 pars instit. fol. 41. 356.

ment of peers referres to peers, tho
words, *The Law of the Land*, r
fers to the Commons; the Law of t
Land is for the tryall of the life of
free Commoner, by indictment, p
sentment of good and lawfull m
where the deed is done, or by Writ
riginall of the common Law, all t
is declared in *Magna Charta*, *c.* 29, a
by 25 *Ed.* 3. *c.* 4. 28 *Ed.* 3. *c.* 3. 37. *C*
3 *c.* 8. 42 *Ed.* 3. *c.* 3. If the Lords wil t
any man by an Ordinance, they d
ſtroy that excellent Act of *Mag*
Charta, and all thoſe other good Law

Sir *Simon de Bereford* a free Com
moner of *England* was condemne
by the Lords to death by an Ord
nance, which after the Lords bett
conſidering the matter, that th
might be acquitted of that ſentenc
became ſuiters to the King, that wh
they had done in future time migh
not be drawn into preſident, becau
that which they had done was again
the Law, *b* with this agrees th
practiſe, and uſage of all times i
this Land, all the free Commoner
of this Kingdome hath alwayes bee
tryed and acquitted or condemne
in capitall cauſes by Iurers of the
equals.

An Ordinance bindeth not in La

at

b Rot. Par. roul. 4. E. 2 Num. 2, part inſt. p. 50 with this agrees Sir Iohn Lees caſe, Rot. Par. 42. E. 3. Num. 22. 23. 2. inſt. f. 50.

all, c and but *pro tempore*, as the Houses now affirme, a man's life not be tried by that which is not ding, and to continue for all es, for a life lost cannot be re-ed.

By an Act of Parliament of the 1. 2. *Philip* and *Mary* c.10. It is en-d that all trials for Treason here to be had, shall be according to course of the Common Law and otherwise.

If the crime charged upon any be reason against the two Houses (a-inst the Parliament it caannot be, there is no Parliament without King) *That is no Treason in Law*, appeares by 25.*Ed*.3.*c*.2. 11.*R*.2. 1.*H*.4.*c*.10. 1.& 2. *Philip* and *Mary*, c.10. 3. *part of the Institutes*, 23.

An Act of Parliament to make any Iudge where he is party, is a void d for none can be a Iudge and ty in the same cause, and therefore House of Peeres being a party tou-ing the crime charged upon any n, whom they would try by an Or-nance for Treason against both Houses, cannot be a Iudge.

By the Petition of Right, e if any n deserve death he ought to suffer the

c See 4.p. inst f.23.48. 232. 298. 292. 2. p. inst. f.47. 48.157.643. 4.H.7.f.18. 1.H.7.f.14. 3. p. inst. f.41.

d Dr Bonams case, 8.part of Cooks Reports.

e Petition of Right, 3.C.R.

the ſame according to the Laws of t
Land eſtabliſhed, and not otherwi
but an Ordinance of the Lords is
eſtabliſhed Law.

The proteſtation, the Vow and C
venant, the ſolemn League and Co
nant, the Declarations of both hou
had, made and publiſhed ſithence t
unnaturall Warre, are amongſt ot
things ſworn and ſet downe to be
maintainance of the Lawes, the pe
ple of this land ought to enjoy
benefit of their Birth-right, the L
of the Land, and the making good
the ſaid proteſtation, Vow and Co
nant, League and Covenant, and D
clarations, otherwiſe truth muſt be ſ
and will be ſaid, that there is brou
in a new arbitrary and tyrannicall g
vernment.

3 part inſt. fol. 89.

If the Lords have taken one ma
life by an Ordinance, they are
bound to take any more, and the c
differs in caſe any appeale be ma
from a tryall by Ordinance to a try
at common Law, which was not do
by that man whoſe life was taken aw
by an Ordinance.

The Lords ought to remem
that His Majeſty and His progeni
have made them a houſe of peers, t
are truſted to counſell him in peac

I m

[illegible] defend him in warre, his Majesty [illegible] Parliament is to consult and treate [illegible] the Peers, and with his Councell [illegible] Law, Judges, his Sergeants, Attur[illegible] and Solicitor, and Masters of the [illegible]cery, the Lords and that counsell [illegible] respective Writ of Summons [illegible] Parliament are to give Counsell, [illegible] House of Commons by their [illegible] to performe and consent.)

[illegible] the House of Lords, the Court [illegible] Parliament onely is, for they onely [illegible]mine upon Oath, *b* with them, the [illegible] in person sits, and by them [illegible] erroneous judgements * (upon [illegible]tion to his Majesty for obtain[illegible] of a Writ of Errour) by the advice [illegible] Judges are reversed, or affirm[illegible] &c. The Lords are to remember [illegible] their eminency and grandeur is [illegible]served by the Lawes, if they leave [illegible] to will, and dishonour their King, [illegible] make nothing of the Lawes, they [illegible]ill make nothing of themselves in [illegible] end.

And therefore, it is well worth [illegible]ur observation what was said by M. [illegible] Pym a Member of the House of [illegible]mmons in his speech against the [illegible]rle of *Strafford*, in the beginning [illegible] the Parliament, which speech is [illegible]blished by the expresse order of the

f Nevels case 8 part Cooks reports.

g 4 pars instit. fol. 4. 9. 27 Edw. 3. c. 1. 15.

3 part instit. fol. 125.

h 1 Hen. 7. fol. 10.

* 14. E. 3. c. 5

House of Commons, the words a
these. *The Law is that which puts a di-
ference betwixt good and evill, betwi
just and unjust; if you take away t
Law, all things will fall into a confusi
every man will become a Law unto hi
selfe, which in the depraved condit
of humane nature must needs prod
many great enormities: Lust will b
come a Law, and Envie will become
Law; Covetousneße and Ambit
will become Lawes, and what d
ctates, what decisions such Lawes w
produce, may easily be discerned,* i. &
They that love this Common-wealt
as things now stand, will use all mea
to procure an Act of Oblivion, a g
nerall pardon from His Majesty, t
Souldiers their Arreares, and tend
consciences a just and reasonable s
tisfaction, else we must all perish, fir
or last.

Act 1 par. book decl. pag. 140. 163.

May 17, 1647

*God preserve His Majesty, and t
Lawes, wherein their Lordships a
the whole Kindom are concerned.*

David Jenkins prisoner i
the Tower of *London.*

BRITISH MUSEUM

TH

THE CORDIALL OF Judge Ienkins,

For the good People of LONDON.

Or reply to a Thing, called An Answer to the poysonous seditious Paper of Mr. DAVID IENKINS; by *H. P.* Barrister of Lincolns-Inne.

Printed in the Yeare, 1648.

MUSEUM

The Cordiall of Judge JENKINS, for the good People of LONDON.

AFter the said Mr. H.P. hath made a recitall of the heads of my *Vindication*, he deduced his Answer unto these eight particulars, which follow verbatim.

I.

It cannot be denyed, but the *Parliament* sits by the *Kings* Writ, nay if Statute Law bee greater than the *Kings* Writ, it cannot be denyed but the *Parliament* sits, or ought to sit by something greater than the Kings Writ: and if it be confessed that the Parl. sits by the kings writ, but do not act by the Kings writ, then it must follow that the Parlia. is a void vaine Court, and sits to no purpose; nay it must also follow, that the Parl. is of less authority, and of less use than any other inferiour Court, forasmuch as it is not in the Kings power to con-

controule other Courts, or pre
them from sitting or acting.

2.

¶ This is a gross *non sequitur*, the K
power is in himself; *Ergo*, it is not
rived to, nor does reside vertually in
Parliament. For the light of the
remains imbodied, and unexhausted
the Glob of the Sun, at the same t
as it is diffused and displayed thro
al the body of the aire; and who
not that the King, without empt
himselfe, gives Commissions daily
Oyre and *Terminer* to others, which
himself can neither frustrate nor el
but for my part I conceive it is a gr
error to infer that the *Parliament* h
only the *Kings* power, because it h
the *Kings* power in it: for it seems
me, that the Parliament does both
and act by concurrent power, devolv
both from the King and Kingdom
and in this some things are more o
vious and apparent than in others. F
by what power does the Parliame
grant Subsidies to the King? if one
by the power which the King give
then the K. may take Subsidies witho
any grant from the Parliament: and
it be so by a power, which the peop
give to the Parliament, then it wil fol
low

the Parliament hath a power gi-
both by King and Kingdom.

3.

The ſending Propoſitions to the
and deſiring his concurrence, is
worth an Anſwer: for Subjects
humbly petition for that which is
ſtrict right and property. Nay it
ſometimes beſeem a Superior to
ſuit to an inferior for matters in
ſelves due. God himſelf hath not
diſdained to beſeech his owne
able, impious, unworthy crea-
beſides, tis not our Tenet, that
King hath no power, becauſe hee
not all power, nor that the King
not at all promote our happineſſe,
ſe he hath no juſt claime to pro-
our ruine,

4.

We affirm not that the Kings power
ſeparated from his perſon, ſo as the
Spencers affirmed, neither doe we
conclusions out of that ſeparati-
the two *Spencers* did, either that
King may be removed for miſde-
meanours, or performed *per aſperſi*:
that the Subject is bound to ge-
in ayd of him: we only ſay, that
power is diſtinguiſhable from his

person, and when he himselfe make
distinction betwixt them, comman
ing *one thing* by his legall Writ
Courts and Officers, and comman
ing *another thing* extrajudicially
word of mouth, Letters, or Minis
we are to obey his power rather t
his person.

5.

We take not from the King all po
er of pardoning Delinquents, we o
ly say it is not proper to him *qua*
mode: For if the King pardon h
which hath murthered my son, his p
don shall not cut me off from my
peal; and 'tis more unreasonable, th
the *King's* pardon should make a who
State which hath suffered remedile
than any private man. So if the K
should deny indemnity to those whi
in the furie of war, have done thing
unjustifiable by the Lawes of peace
and thereby keep the wounds of th
State from being bound up, 'tis equit
able that an Act of Indemnity shou
be made forcible another way. And
his will not hold, yet this is no goo
consequence, the *King* is absolute i
points of pardons, therefore he is abso
lute in all things else; and the parlia
ment hath no power to discharge De
linquencies,

quencies, therefore it hath no pow-
e other matters.

6.

The Parliament hath declared the
g to be in no condition to governe
thir must not be interpreted rigid-
and without distinction; for if the
g with his Sword drawn in his
nd, and pursuing the Parliament
d their Adherents as Rebels, be
e for all Acts of Government,
it is not hereby insinuated that he
divested of the habit or right of Go-
ning; if he be unqualified now, he
not unqualified for the future; if he
not do things destructive to the
liament, he is not barred from re-
ning to the parliament, or doing
fice to the parliament. This is a
uplous cavil, and *subterfuge.*

7.

We swear, that the *King* is our su-
me Governour over all persons,
nd in all causes; but we do not swear
is above all Law, nor above the
fetie of his people, which is the end
of the Law, and indeed *Paramount*
to the Law it selfe. If he be above
Law, or liable to no restraint of our
Law, then we are no freer than the

French or the *Turks*, and if he be a
bove the prime end of Law, *comm*
safety, then wee are not free as th
French or *Turks* · For if the tota
subversion of the *French* or *Turk* wer
attempted, they might by Gods Law
imprinted in the book of Nature, justi
fie a self-defence; but we must remedi
lesly perish, when the King pleases t
command our throats. Besides, ho
atchieved the King of *England* such
Supremacy above all Law and th
community it selfe, for whose behoof
Law was made? If Gods donation b
pleaded, which is not speciall t
him, or different from what othe
Kings may pretend to, then to whi
purpose serve our Lawes, nay, to
what purpose serve the Lawes of o
ther Countryes? for by this general
donation, all Nations are condemned
to all servitude as well as we. If the
Law of this Land bee appealed to,
what Bookes hath Mr. *Ienkins* read,
where hath he found out that *Lex Re*
gia, whereby the people of England
have given away from themselves all
right in themselves? Some of our
Bookes tell us, that we are more free
than the *French*; that the King can
not oppresse as in our Person or E
states, by imprisonment; denying
just.

...lice: or laying Taxes without our ...sents. Other Books tell us, that ...safety of the people, is the supreme ...law, and that the King hath both God ...d the Law for his Superiour. But ...ll this is nothing to learned M. *Jen-* ...*kins*.

8.

We admit, that no Acts of Parliament are compleat, or formally binding, without the Kings assent; yet this is still to be denied, that therefore without this assent particularly expresly, the two Houses can do nothing, nor have any virtual power at all, no, not to examine M. *Jenkins*, nor to do any other thing of like nature, though in order to publike justice and safetie. I have done, and wish M. *Jenkins* would call in and lick up again his black infamous execrable reproaches, so filthily vomited out against the Parliament.

To the first.

I Was examined by a Committee appointed by the House of Commons: I say, and said that the House of Commons have no power to examine me, for that it is no Court; every Court hath power to exa-

examine upon Oath; this power the House of Commons never claimed. The Court of *Pye-powders*, *court-Leet*, *Hundred court*, *County court*, and every other Court of Record, or not of Record hath power to examine upon Oath, and an examination without Oath is a communication onely: examination in Law is upon Oath.

5 H. 4. c. 3.
3 H. 6. 46.
19 H. 6. 43.
35 H. 6. 5.

There is no court without a power of tryall: the House of Commons have no power to try any offence, nor ever practised it by Bill, Indictment, Information, Plaint, or Original Writ, to reduce it to tryall, nor to try it by Verdict, Demurrer or Examination of Witnesses upon oath, without which there can be no condemnation or judgement: and that which can attaine to no reasonable end, the Law rejects as a thing *inutile* and useless. *Sapiens incipit a fine.*

Sir Anthony Maynes case.
Cook 1. par. Reports.
Lit. 2. lib. Sect. 194. 6. H. 4. 1.

The Writ whereby they are called gives them power, *Ad faciendum & consentiendum*: To what? To such things *Quæ ibidem de communi consilio ordinari contingerint* (*viz.*) in the Parliament: This makes nothing at all for a Court for the House of Commons: that *consilium* which that Writ intends, is cleared partly by the Writ for

4 par. instit. fol. 8. & 9.

chusing Knights, &c. For the King by that Writ is said to resolve to consult and treate with the Prelates and Peeres of the Kingdome, for and touching the great concernments of the Common-wealth (for the King never sits in the House of Commons:) and this also is made evident by the Writs to the Prelates, Peeres, Judges, and to his Counsell at Law: The words in the Writ are, *To appeare and attend the Parliament, Consilium impensuri*, the one doth *consulere*, the other *tractare & consultare*.

The House of Lords, where the King sits in person assisted by His Lords, Judges, Serjeants, Attorney, Solicitor, Masters of the Chancery, is a court of Record to many purposes, set down in the Bookes of Law, and the Statutes of the Land, and that court is onely in the House of Lords, where the King sits. 7 H. 6. 28. 1 H. 7. 20* 13 Ed. 3. c. 5. 4 pars inst. p. 21.

A court must either bee by the Kings Patent, Statute Law, or by the common Law, which is common and constant usage: the House of commons hath no Patent to bee a court, nor Statute Law to bee a court, nor common usage: they have no Journall Booke, but since *Edward*, 6. time, was there ever Fine by the House of Com- Plowd. Com. 319.

Commons estreated into the Exchequer? For murder or Felony they cannot imprison no man, much lesse for Treason; that House which cannot do the lesse, cannot doe the greater.

25. E. 3. c. 4. 3. Car. Petition of Right.

It is ordained, that no man shall be imprisoned or put out of his Franchise by the King or his Councell, but upon indictment or presentment of his good and lawfull Neighbours, where the deed is done, or by originall Writ at the Common Law, and so is *Lex terræ* the Law of the Land mentioned in *Magna Charta*, cap. 29. expounded, and the said *Magna Charta*, and *Charta de Forresta* are declared by the Statute of 25. E. 1. c. 1. to bee the Common Law of the Land. All Judges and Commissioners are to proceed *Secundum legem, & consuetudinem Regni Angliæ*, as appeares by all proceedings in all Courts, and by all Commissions: and therefore the house of Commons by themselves proceeding not by Indictment, Presentment, or Originall Writ, have no power to imprison men, or put them out of Franchise.

4 pars instit. p. 1. 3 pars instit. p. 23.

This no way trenches upon the Parliament; for it is in Law no Parliament without King and both Houses; I have onely in my Paper deli-

livered to Mr. *Corbet*, applyed my
e to that Committee, that had not
wer to examine mee, but I never
ught, said, or wrote, that the Par-
ment had no power to examine me.
The Law and custome of this Land is
at a Parliament hath power over my
e, liberty, lands and goods, and o-
r every other Subject, but the House
f Commons of it selfe hath no such
ower.

12. H.7.20; Princes case, 8 Pars Cook. 1 pars instit. p.159. 14 H. 8. 3. Dier 38. H.8.60.

For the Lord *Cookes* relation, that
e House of Commons have imposed
ines, and imprisoned men in Queen
Elizabeths time, and since; Few facts
f late time never questioned, make
o power nor Court; *à facto ad jus*
s no good argument; for the words
of the Statute of 6. *Hen.* 8. c. 16.
hat a licence to depart from the House
f Commons for any Member there-
of, is to be entred of Record into the
booke of the Cleark of the Parlia-
ment, appointed, or to be appointed
for that House, doth not conclude that
the House of Commons is a Court of
Records.

1 pars inst. 19.b.

4 P. Inst. c. Parl.

Hobbarts reports fol. 152.

For first; that Law of 6. *H.* 8. c. 26.
handles no such question, as that,
whether the House of commons be a
court; it is a maxime in all Lawes,
Lex aliud tractans nil probat, the word

Hobbarts reports, fol. 154.

(*Re-*

(*Record*) there mentioned, is onely a memoriall of what was done and entred in a book : A plaint removed out of the County-Court to the Court of the common-Pleas, hath these words in the Writ of remove, *Recordari facias loquelam, &c.* and yet the county court is no court of Record : and so for ancient Demesne in a Writ of false judgement, the words are *Recordari facias loquelam, &c.* and yet the court of ancient Demesne is no court of Record; and so of a court Baron, the Law and custome of *England* must bee preserved, or *England* will bee destroyed, and have neither Law nor custome.

Fitz. Nat. Br. 70.
Fitz. Nat. Br. 13.
11 H. 4. 33.
34 H. 6. 49.

Let any man shew mee, that the court of Lords, or the House of commons in any age hath made any man a Delinquent (*Rege dissentiente*) the KING contradicting it under his Great Seale. *Michell*, and others of late were condemned by the prosecution of the House of commons in King *Iames* his time; did King *Iames* ever contradict it? And so in ancient times, where the House of Peeres condemned the Lord *Latimer* in 50. E. 3. The Kings pardon freed him; which shewes clearly, that the Kings expresse or implied assent must of necessity

4 Pars Inst. Tit. Parlia. p. 33.

[illegible] be had to make a Delinquent. [illegible] execution of the sentence is in [illegible] Kings name.

The Gentl. saith, *That the Parliament sits, or ought to sit by something greater than the Kings Writ, &c.*

No Parliament did ever sit without the Kings Writ, nor could ever Parliament begin without the Kings presence in person, or by a Guardian of England by patent under the Kings Great Seal, the King being *in remotis*, or by Commission under the Great Seal to certain Lords representing the Kings person, and it hath been thus in all Ages unto this Session of Parliament, wherein his Majestie hath been pressed, and hath passed two Acts of parliament, one for a Triennial parliament, and another for a perpetual, if the Houses please, to satisfie their desires; how these two Acts agree one with another, and with the Statute in *Edv.* the Thirds time, where parliaments are ordained to be holden every year, and what mischiefes to the people of this Land such length of Parliaments will produce by protections and priviledges to free them and their menial servants from all debts during their lives, if they please to continue it so long, and how

4. Pars inst. p. 4. & 6.

4 E. 3. c. 14. 36. E. 3. c. 10. 21. Iac. the Act of Limitation of Actions. c. 22.

how destructive to mens actions a
gainst them, by reason of the Statut
of Limitations, which confines the
actions to certain yeares, and many
other inconveniences of greater im
portance, is easie to understand.

How can any man affirme, that the
two Houses of Parliament do ad
now by the Kings Writ, which relate
to counsel and treatie with the King
concerning the King, the defence o
his Kingdom and of the Church of
England, these are three points which
it tends to, as appeares by the Writ.
They keep their King prisoner at
Holmby, and will not suffer him to
consult and treat with them. They
have made a Vow and Covenant to
assist the Forces raised and continued
by both Houses against the Forces rai-
sed by the King without their consent,
and to the same effect have devised
the Oath which they call the *Negative*
Oath: Is this to defend the Kings
Kingdom? or their kingdom?

4. p. inst. & p. 14. Vow and Covenant, p. 15.

When by their solemne League and
Covenant they extirpate Bishops,
Deanes and Chapters root & branch,
Is this to defend the Church of *Eng-*
land? (that Church must necessarily
be meant, that was the Church of
England when the said Writ bore test)
they

3. pars, Cooke Dean and Chapter of Norwich.

they were not summoned to defend a Church that was not in being; to destroy and defend the Church are very contrary things; the Church is not defended, when they take away and sell the Lands of the Church.

The Gentleman saith, *The King cannot controul of her Courts of Justice, or prevent them from sitting, or acting, and therefore not the two Houses, &c.* It is true, the King cannot controule or prevent his other Courts, for that they are his ordinary Courts of common Justice, to administer common right unto all men, according to the fixed Laws. The Houses make no Court without the King, they are no Bodie corporate without the King, nor Parliament without the King, they all make one corporate Bodie, one Court called the Parliament, whereof the King is the Head, and the Court is in the Lords House, where the King is present: and as a man is no man without a head, so the Houses severed from the King, as now they are, have no power at all, and they themselves by levying War against the King, and imprisoning of him, have made the Statute for not dissolving, adjourning, or proroguing this Parliament of no effect, by the said Acts of their own:

14 H. 8. 3.
36. H. 8. Dier. 60.
4. p. inst. p. 1.

they

they ſit to no purpoſe without his aſ-
ſent to their Bills, they will not ſuffer
him to conſult with them, and treat
and reaſon with them, whereby He
may diſcerne what Bils are fit to paſſe,
and what not, which in all Ages the
Kings of this Land have enjoyed as
their undoubted Rights, and therefore
they ſit to no purpoſe by their own
diſobedience and fault.

27. H. 8. c. 24. 28. H. 8. 11. Dier. 2. R. 3. 11.

For the ordinary Courts at *weſtmin-
ſter*, the Judges in all thoſe Courts are
Judges by the Kings patent or Writ,
otherwiſe they are no Judges: the Hou-
ſes can make no Judges, thay are no
Judges at all who are made by them;
the whole and ſole power of making
Judges belongs to the King: the King
cannot controul or prevent his own
Judges from ſitting and acting, but the
Houſes He may, for they are not the
Kings Judges but the judges of the
Houſes. In his other Courts, the King
commits his power to his Judges by
his patent, and they are ſworne to do
common right to all men, and the
King is ſworn not to let them from ſo
doing, the King cannot judge in thoſe
Courts, nor controul; but the King
is both Judge and Controuler in the
Court of Parliament: *Quoad* Acts
for his aſſent or diſſent doth give life

or

death to all Bills. Many Lawyers have much to answer to God, this Kingdom, and to posteritie, for puzzling the people of this Land with such Fancies, as the Gentleman who wrote the Answer to my Paper, and others have published in these Troubles, which have been none of the least causes of the raising and continuing of them. And so I have done with the first part of this Answer.

AD. 2.

For the *Non sequitur*, in the second section of the Gentl. Answer, the Antecedent and the Consequent are his own.

(*libellus*:
Quem recitas meus est (O Fidentine!)
Sed malè dum recitas incipit esse tuus.

My words are, that the King is not personally in the two Houses at *Westminster*, to enable them to grant pardons, for that whole and sole power by the Law belongs to the King: My Paper hath no such thing, as that the Kings power cannot be derived to others, or the virtue of his power. For that power and the virtue of his power, is in all patents to his Judges, in charters to Corporations, in Commission

27. H. 8. c. 24.

missions of all sorts, and in the Parliament assembled by force of his Writ of Summons, so long as they obey him: but when they renounce that power, and claim it not from the King, and declare to the Kingdom that he is not in condition to govern, and imprison him, and usurp to themselves all Royal Authoritie, as the two Houses now do, no reasonable man can affirme that they Act by the power of their Prisoner, who hath no power to give them, that by force of Armes take all power unto themselves.

The Gent saith, *The King grants Commissions dayly of* Oyre *and* Terminer, *which he cannot frustrate nor elude.* The King may revoke and discharge the Commission by his Writ, as he may remove all Judges, and place other men in their room; and any Kings death determines all the Judges Patents at *Westminster* Hal, Commission of *Oyre* and *Terminer*, &c. And so he might dissolve both Houses in all times, by his Writ under the Great Seal, untill that in this Parliament, by his own concession, the King of his goodnesse had secluded himselfe; which goodnesse hath been full ill requited.

4. E. 4. 39.
5. E. 4. 4.
1. Eliz. Dier 165.
1. Mar. Brooks case 97.

The

The Gentl. affirmes, *That the power of Parliament hath is concurrent from the King and Kingdom*; which, he saies is proved by the grant of Subsidies to the King by the Parliament. The mistaking of this word *Parliament*] hath been mischievous in these times to this Land, and it is wilfully mistaken, which makes the fault greater, for the two Houses are not the Parliament, as before is declared, and at this time so to inculcate it; when all men know, that of the two. Peers of this Kingdom, who are temporal Peers before the Troubles; there are now not above 30. in the Lords House, and in the House of Commons about 200. of the principal Gentlemen of the Kingdom left the House and adhered to his Majesty, who is imprisoned by them, shewes no such candor as is to be desired.

4. Part Inst. pag.

It is true, that no Tallage can be laid upon the people of this Land but by their consent in Parliament, as appeareth by the Lawes mentioned in the Margent; but you shall finde in Mr. *Seldens* learned Book, called *Mare clausum*, a number of presidents in these Thirds time for Ship-mony justly condemned this Parliament, to the which his Majesty assented; and in truth

25.E.1.confirmatio chartarum c.6.
34.E.1.c.1. de Tallagio non concedendo.

truth that Ship-money was conden-
ed before by the said two Statutes
25.E.1 & 34.E.1. *de Tallagio non con-
cedendo*. *Dangelet*, *Englishely*, and ma-
grievous Burthens were laid upon
people, and born, untill that memo-
ble Princes time. But I am of opini-
that the common Law of the La-
did alwayes restrain Kings from
Subsidies and Tallages, but by conse-
in Parliament; which doth appear
Magna Charta the last chapter, whe-
the Prelates, Lords, and Communa-
ty gave the King the fifteenth part
their moveables. In truth it is
manner of consequence, because th-
King cannot take what he pleaseth
the Subjects goods, that therefore the-
have a concurrent power in Parlia-
ment: there have been many Parlia-
ments and no Subsidies granted, par-
liaments may be without Subsidies
but Subsidies cannot be without par-
liaments: of ancient times parlia-
ments rarely granted any, unlesse i-
were in the time of forreigne Warre-
and in my time, Queen *Elizab.* refu-
sed a Subsidie granted in parliament
and in the parliament of 1. *Iac.* none
were granted. The Gentl. should
make a conscience of blinding
the people with such untrue co-
lours,

to the ruine of the King, and

AD. 3.

Gentl. affirmes, *That the sen-*
propositions to the King, and de-
his concurrence, is scarce worth an
for Subjects may humbly petiti-
that which is their strict right
perty, &c. The propositions sent
castle, are in print; wherein
two Houses are so farre from
petitioning, that they stile
themselves his Majesties Sub-
, as appeares by the proposi-

that they have a strict right or pro-
to any one of these propositions
change assertion, every one of them
against the Lawes now in force.
the two Houses a strict right &
to lay upon the people what
they shall judge meet? To par-
all Treasons, &c. that is one of
Propositions. Have they a strict
and property to pardon them-
? and so for all the rest of their
positions.

these propositions have been Voted
both Houses, the Kings assent (they
drawn into Bills) makes them
of Parliament: Hath the King

12. H. 7
20. 1 Iac.
c. 1. 1. Car.
c. 7.

no right to assent or dis-assent? the sending but a Complement? our Law-books and Statutes otherwise. This Gent. and oth must give an account one tim other for such delusions put upo people.

AD. 4.

The Gent. saith, *They affirm that the King's power is separated his person, so as the two Spe affirmed, &c.* His Majesties per now at *Holmby* under their Gu have they not severed his power him, when by no power they hav him, he can have two of his Chapl who have not taken their Coven attend him for the exercise of his science?

15. Ed 2. Exilium Hugonis Calvins case 1 E. c. 2. 7. pars, Reports, 11.

For the three conclusions o *Spencers*, do not the two House every of them? They say, his M sty hath broken his Trust, touc the Government of his people: have raised armies to take him, haue taken him and imprisoned hi they governe themselves; they Laws, impose Taxes, make Jud Sheriffes, and take upon them *insignia summæ potestatis*: Is not th remove the King for misdemean

reforme *per asperte*, to govern in aid him; the three conclusions of the ers? Doe they think the good le of *England* are become ſtupid, will not at length ſee theſe things? The Gentleman ſaith, *They doe not rate his power from his Perſon, but inguiſh it, &c.* His power is in his all Writs, Courts, and Officers: n they counterfeit the Great Seal, ſeale Writs with the ſame, make ges themſelves, Courts and Offi- by their owne Ordinances againſt conſent, declared under his true eat Seale of *England* (not by word mouth, letters, or miniſters onely), t Seale is obeyed, their own Writs, r own Judges, their owne Courts, r own Officers, and not the Kings: e time will come when ſuch ſtrange ions & diſcourſes will be lamented.

Plowd, 4. Eliz. 213. the Kings Power and his perſon are indiviſible.

AD. 5.

The Gentleman goes on, *We take from the King all power of pardo- Delinquents, we only ſay it is not to him* quarto modo. *&c.* What you meane by *quarto modo?* I am *Omnis Rex Angliæ, ſolus Rex & Rex*, can doe it, and none elſe; the bookes of the Law to this poſe, collected by that reverend

Stanford. pleas 99. 27 H.8.c. 24. Dier. 163.

and learned Judge *Stanford*, from Antiquity to his time, who died in last yeare of King *Philip* and Qu *Maries* Reigne, you shall finde truth undeniable; and this power never questioned in any Age in Book by any untill this time, that thing is put to the question: You G tlemen, who profesſe the Law, maintaine the party against the K returne at length, and bring no much scandall upon the Law, (w preserves all) by publishing such i dible things.

Bract. lib. 3 cap 14. fol. 132. 1. pars Institit. pag. 344. Plow 3. Eliz: 236. 237.

We hold only what the law holds Kings Prerogative and the subjects berty are determined, and bounded admeasured by a written Law they are; we doe not hold the Ki have any more power, neither doth majesty claime any other but what Law gives him; the two House the Law of this Land, have no co of power, either to make Delinquen or pardon Delinquents, the King tradicting: and the Army under *Thomas Fairfax* (howbeit but So ers) doe now understand that to Law, and doe now evidently see, assuredly know, that it is not an O nance of the two Houses, but an a Parliament, made by the King, Lo

Commons that will secure them, ...this Army remember their exc... fellow-Souldier, and the Law ...wales so taken by all men untill ...troubles, that have begot Monsters ...inions.

A D. 6.

...is Gentleman sayes, *The Parlia... hath declared the King to be in no ...tion to governe, &c.*

...re is no end of your distinctions, ...you professe the Law; shew me ...for your distinctions, or letter, syl... or line, in any *Age* in the books ...Law, that the King may in one ...he in no condition to govern, and ...the habit of governing, and ...time he may (*viz*) when the ...Houses will suffer him: the Law ...then, *Vbi lex non distinguit, non ...distinguendum.*

...saies, *The King is not barred ...returning to His Parliament*, ...he calls the two Houses) he ...the contrary, the whole City ...the contrary, *Nos juris consulti ...sacerdotes*, (as *Justinian* the Em... hath it, in the first book of his ...tutions) and therefore know... and truth should come from ...lips: Worthy and ingenious men

will remember, and reflect upon t
passage of that good and wise n
Seneca, *Non qua itur, sed qua eund*
follow not the wayes of the Lawy
of the House of Commons: God f
give them, I am sure the King will
they be wise and seek it in time.

AD. 7.

5 Eliz. ch. 1. Cawdreys case 5 pars, fol. 1.

The Gent sayes, *we swear that* ... *King is our supreme Goverour outr* ... *persons & in all causes, &c.* Why h ... he left out the word (*onely*?) for ... Oath the Members now take, is t ... King *Charles* is now the only and ... preame Governour in all causes, o ... all persons, and yet they keep their o ... Supreme Governour now in priso ... *and* act now in Parliament by ver ... of their prisoners Writ, and by a co ... current power in this Parliament; a ... by their own strict right and prope ... (as the Gentleman affirms in ... Answer) These things agree w ... with their Oath, that the King is t ... onely Supreame Governour in ... causes over all persons, This Oath ... taken now in the Parliament time ... all the Members of the House ... Commons, and is required by ... Law to be taken in all Parliament ... otherwise they have no power, ... co

This Oath is allowed by the common-Law of the Land

to meddle with the publick Af-

his Oath being taken in Parlia-
that *the King is the only and Su-*
Governour in al Cauſes, then it
ers in Parliament cauſes, *over all*
, then over the two Houſes; Let
keep this Oath, and we ſhall bee
of Peace in the Land; and good
yers ought to deſire peace both for
ublicke good, and their private,
not diſhonour that Noble profeſ-
, as many doe in this miſerable

The Gent. ſayes, *wee do not ſwear*
the King is above all Law nor a-
the ſafety of his people; neither
ſo ſweare, but his Majeſty and we
ſweare to the contrary, and have
ne and have made good, and will
Gods grace make good our Oath to
world, that the KING is not a-
the Lawe, nor above the ſafety
is people: the Law, and the ſafety
his people are his ſafety, his Honour
his Strength.

ADS.

The Gent. concludes, *That Acts of*
liament are not formaly binding nor
plead without the Kings *aſſent, yet*
Houſes have a virtual power with-

out the Kings particular assent, to
things in order to publique justice
Safety (*viz.*) In setting up the Exc
in raising and maintaining of Arm
in Taxing the people at pleasure w
Fifth and Twentieth part, Fifty S
sidies, Sequestrations, Loans, Co
positions, imprisoning the King,
bolishing the Common prayer Boo
selling the Churchs Lands, &c. all th
are in order to the publick Justice a
Safety.

Mr. H. P. you are of my profes
on, I beseech you, for the good
your Country, for the Honour of
Science perswade your selfe and othe
as much as in you lies, to beleeve a
follow the monition and councell
that memorable, reverend, and p
foundly Learned in the Lawes a
Customes of the Land, the Lo
3 par. Inst. pag 36. COOKE, who writes as becom
a great and a learned Iudge of t
Law (a person much magnifi
by the two Houses) in these words

Peruse over all Books, Record
and Histories, and you shal
finde a Principle in Law,
Rule in Reason, and a Tria
in Experience, that Treason
doth ever produce fatall and fi
nal

destruction to the offender,
never attains to the desi-
red (two incidents inseparable
thereunto) & therefore let all
abandon it as the poysoned
bait of the divil & follow
precept in Holy Scripture.
FEAR GOD, HONOUR
THE KING, AND
HAVE NO COMPANY
WITH THE SEDITI-
OUS.

Conclusion.

I say againe, that without an Act of
Oblivion, a gratious Generall pardon
from his Majesty, the arrears of the
Soldiers paid, a favourable regard
had to tender Consciences, there will
neither Truth nor Peace in this
Land, nor any man secure of any thing
he hath.

By me David Jenkins Prisoner
in the Tower.

A DISCOURSE

TOVCHING

The Inconveniencies of
Long-continued

PARLIAMENTS

A Perpetuall Parliament is repugnant to the Act made this Parliament for a Triennial Parliament; for how can every three yeares a Parliament beginne, if this bee perpetuall which may bee so if the two Houses please?

2. An adjournment of the Parliament makes no Session, 4 *pars; instit. fol.* 27. Howbeit, before the adjournment, the KING gives His Royall assent to some Bills. *Coke ibid.*

3. There is no Session till a Prorogation

tion or diſſolution of the Parlia-
.

This Parliament, as appeares by
Act for not diſſolving thereof, ſet
ne in the printed Statutes of this
hament, *fol.* 138. cannot be pro-
ed or diſſolved, but by Act of par
ent. There hath been as yet no
of Parliament in that behalfe:
d therefore all the Acts of this
rliament, are Acts of one Seſ-
n.

Plowd. com. 33. 8. Bro. relation 35. Bro Parl. 86. Dier. 1. Mariæ 8

. All Acts of one Seſſion relate
the firſt day of the Parliament,
d all the Acts of ſuch a Parliament
acts of one day: ſo the Act for
Triennial, and the Act for this
rpetuall, are two Acts of one day
the Law.

4 *Ed.* 3. *cap.* & 36. *Ed* 3. *cap.* 10. Parliament is to be holden once e-
ry yeare, and more often if need
all bee; thoſe Acts are confirmed by
e Act for the Triennial Parlia-
ent. How doth a perpetuall Parli-
ment agree with a Parliament once
ery yeare, or with the intention
thoſe Lawes? How doth a Parlia-
ent every three years agree with a
Parliament for ever, which may be if
e two Houſes pleaſe?

7. The reſult is this; at one day in
Law.

Law this Parliament two acts ha
passed (for howbeit the one was in 1
Carol. and the other in 17 *Carol.* y
both in Law are Acts of one day) th
one saith there shall be a *Triennia*
Parliament after the end of the sit
ting of this Parliament: The other
this Parliament shall sit for ever if the
please. The one will have a Parli
ment with an end, the other a Parli
ment without an end.

1 Pars. Doct. Bonhams case. fol. 118 8. E. 3 3. 30. 33 E. cassavit, 32. 27. *H.* G. Anuity 41. 1. Eliz. Dier, 113.

When an Act of Parliament is
gainst common Right or Reason,
repugnant, or impossible to be perfor
med, the Common Law shall control
it, and adjudg this Act to be void; th
are the words of the Law.

An Act of Parliament, that a Ma
shall be judg in his own Cause, is a voi
Act. *Hobbart* Fol. 120.

Begin with Common Right. It
against Common Right, that indebte
men should not pay their debts
That if any Member of the House
Commons doe any Subject wrong b
disseising him of his land, or dispo
sessing him of his goods, or blastin
of his fame, or doing violence to h
person, that such persons during the
lives should not be questioned by
Priviledg of Parliament, and th
extended also to many other besid
them

mſelves, common right doth abhor
de Enormities, which a perpetuall
vliament doth beget, beſides the ut-
deſtruction of al mens actions, real,
ſonall, or mixt, who have to doe 21. Iac. c.
th Parliament-men, by the ſtatute of 16.
imitation, which confines Suites to
raine yeares.

For Common Reaſon. Parliaments
re ordained for remedies to redreſſe
blique greivances, it is againſt rea-
they ſhould make publique and in-
fferable Grievances. The Law of
e Land allowes no protection for a-
y man imployed in the ſervice of the
ingdome but for a yeare, to be free
m Suites, and in many Suites none
all, howbeit he be in ſuch ſervice, 39. H. 6.
t a Parliament perpetuall may 39.
ove a protection, not for a yeare,
t for ever, which is againſt all
nner of reaſon.

For impoſſibility. The death of his
ajeſty (whoſe life God prolong)
ſſolves it neceſſarily; for the Writ of
ummons is, *Carolus Rex in hac in-*
vidua, and *Carolus Rex* is in this
rticular, *habiturus colloquium &*
ractatum cum prelatis & proceribus,
c. King *Charles* being to have con-
rence and Treaty with his Prelates
nd Peeres; *Carolus Rex* cannot have

Colloquium

colloquium et tractatum, Conference and Treaty when he is deceased, and therefore it is as impossible for any Parliament to continue as long as they please, as for a Parliament to make a dead man alive.

2 H. 5. Cook title Parl. 3. pars

For Repugnancy. That which is but for a time cannot be affirmed to have continuance for ever, it is repugnant.

The end of the Act 17 *Caroli Regis*, which is to continue at pleasure, is in the said act expressed to be to raise credit for Mony for these three purposes. First, for relief of his Majesties Army and People in the North. Secondly, for preventing the imminent danger of the Kingdome. Thirdly, for supply of other his Majesties present and urgent occasions. These ends are ended, the relief of that Army, the imminent danger supposed was six yeares agoe, the supply of his Majesty hath been a supply against Him; take away the end, the meanes thereto are to no purpose; take away the cause, the effect ceaseth; and therefore the three ends of this Act being determined, it agreeth with Law and reason, the Act should end, the Law rejects things unprofitable and useless.

Sir Anthony Maines case, 5. pars 1. H. 4. 6. Littl. cap. Villen.

A perpetuall Parliament (besides

...it incites men to ſelfe-ends, de-
...ctive of the publique, of which the
...ole Kingdom hath had ſufficient
...perience) will be a conſtant charge
...the Kingdom; for that every Coun-
...and Borough, who ſend Members
...the Parliament, are by the Law to
...Wages to their Parliament-men,
...ich to many Counties will amount
...ove ſome Subſidies yearly: there
...e many poor Borough-Towns in
...ch County of this Kingdom, who
...ing to maintain two Burgeſſes in
...rliament, will be quickly beggered,
...the Parliament have no end; for
...which reaſons it is clear, that ſuch
...g continuance of Parliaments,
...ll inſtead of a remedy (which is
...d ought to be the proper and true
...ds of Parliament) become an in-
...ferable Grievance and Oppreſſion
...all the People of the Land.

The Writ of Summons this Parlia-
...nt is the *Baſis* and Foundation of
...Parliament: If the foundation be
...ſtroyed the Parliament falls. The As-
...bly of Parliament is for three pur-
...ſes. *Rex eſt habiturus colloquium &*
...*ſtatum cum Prælatis, magnatibus*
...*proceribus ſuper arduis negotijs, con-*
...*cernentibus* 1. nos. 2. *Defenſionem regni*
...*ſtri* 3. *defenſionem Eccleſiæ Anglica-*

næ. This parliament hath overthrow this foundation in all three parts 1. *Nos.* The King they have Chas him away, and imprisoned him; the have voted no prelates, and that number of other Lords, about fourt in the City must not come to th House, and about fourty more are o of Town, the *colloquium & tractat* are made void thereby. For the Kin cannot consult and treat there wi men removed from thence. 2. *Defe sionem regni nostri*, that is gone; the have made it their Kingdom, not Hi for they have usurped all his Sove raignty. 3. *Defensionem Ecclesiæ Ang cana* that is gone, that *Ecclesia Angli cana* must be understood necessaril that Church, that at the test of the Wr was *Ecclesia Anglicana*, they have de stroyed that too, So now these me would be called a Parliament, havin abated, quashed and made nothing o the Writ whereby they were summon ed and assembled. If the Writ be ma void, All the Processe is void also: th House must needs fal where the Foun dation is overthrown, *Sublato funda mento opus cadit*, the foundation bein taken away the work fals, is both Maxime in Law and reason.

For some years past, there is no crime

…e from treason to trespass, but they … guilty of all treasons, Felonies, …beries, Tresspasses are *contra pa-…, coronam & dignitatem Regis*, …inst the Peace Crown and Dignity …e King; as appeares by all In-…ments in all Ages. *Pax Regis*, the …peace, *Corona Regis*, the Kings …n, *Dignitas Regis*, the Kings dig-…are all trod under foot, and made …ing; *Pax Regis*, the peace of the …g is become a Warre against the …, his Dignity put into Prison, and …Crown put upon their owne heads. …All the Judges of England have re-…d, that Noble Men committing …ason have forfeited their office and …nity; *their office is to councell the …g in time of Peace, to defend him in …e of Warre*, and therefore those men …inst the duty and end of their Dig-…y taking not only councell, but …s also to destroy him, and be-…thereof attaint by due course of …, by a tacit condition annexed to …estate of their dignity, have forfited …same, they are the words of the law, …therefore they have made them-…es incapable to be Members of the …per House.

Nevils case 7. part 34. 2. Iac.

The

Briberies, Extortions, Monopolies ought to be inquired after by the Houſe of Commons, and complained of to the King and Lords, What have they done?

The Houſe of Commons cannot by the Law commit any man to priſon who is not of the ſaid Houſe, for Treaſon, Murder, or Fellony, or anything but for the diſturbance of the publique peace, by the priviledge of the whole Body.

They have no power by the Writ which the King iſſueth to elect and returne Members of that houſe, ſo to do. For the Writ for them is onely *ad faciendum & conſentiendum*, to thoſe things, whereof his Majeſty ſhal conſult and treat with his Prelates and Nobles, *& de communi conſilio regni* ſhall be there ordained, as appears by the Writ. Here is no ſeparate power given over the Kings people to them but only *ad faciendum & conſentiendum* and in all times this hath been expounded and reſtrained to that which concerned their own Members in relation to the publiqne Service as they are Members of the corporate Body

4. pars inſt. 23, 24, 25.

dy of the Parliament, whereof the ng is the Head.

but that the Houſe of Commons re commited any man for Treaſon, rder or Felony, or for any offence t had no relation to a Member of Houſe of Commons, as it is a- nſt Law and reaſon, ſo no inſtance be given till this Parliament.

All Queſtions and Tryalls where matter are examined, the Examina- n is upon Oath by the Law, by our Books, Statutes, every dayes ſtice. Examination without an and it but a looſe diſcourſe, there- e the Houſe of Commons not aining power to give Oath have no wer to examine any man. 19.H.6. 43.22.E. 4.22.5.H. 4.c.8.3.H. 6.46.

No man ſhall be impriſoned by the ng or his Councell, unles it be by tainment, preſentment of his good lawfull Neighbours where ſuch ds be done, in due manner, or by ceſs made by Writ original at the mmon Law; this Statute rehearſes agna Charta, p.29. & expounds Lex re, the Law of the Land there men- ned: this Law bindes all men, and Houſe of Commons (for they ſay y are of the Kings Councel) in all oints, but only againſt the diſturbers the ſervice of the Parliament; and 25.E. 3.c. 4. Petition of Right. 3 Car.

therfore

therefore the Imprisonment of several persons who are not their Members, for no disturbance to their Members is utterly against the Law of the Land and the Franchise of the Freemen of this Realme.

Cui non licet quod minus, non licet quod Majus; he who may not do what is lesse, may not do what is greater: the cannot commit a man for murder Fellony, much lesse for Treason.

8 pars, Cook 120 27. H. 6 8. No Court can fine and imprison but a Court of record, the House of Commons is no Court of Record, the House of the Lords where the King in person, his Nobles and his Judges and Councell at Law, the Masters of the Chancery assisting, is a Court of Record, and that is the Court of Parliament, where the *Colloquium & tractatus* is. The House of Commons may present Grievances, grant or not grant Aides, consent or not consent to new Lawes, but for fining or imprisoning any but as aforesaid, is but of late date, and no antient usage: They have no journall Book, but sithence *Edw.* 6. time 6. *Hen.* 8, *cap.* 15. does

21. E. 4. fol 46 not prove the House of Commons to be a Court of Record, it mentions only to be entred on Records in the Booke of the Clerke of the Parliament

any members depart into the Coun-
ty. There is no Journal but sithence
Edw. 6. time and that is a Remem-
brance or memoriall, as 12. H. 4. 23.
The whole Parliament is one corpo-
rate Body, consisting of the Head and
three Estates: The Court is onely
there where the *Consilium & tractatus*
is, where the consult and treaty is with
the King, which is in the House of
Lords only.

Commons in Parliament ne sont Iudges.

The House of Commons claime not
to examine upon Oath any Man; no
Court can be without a power to give
an Oath, Courts Baron, Court of Pi-
powders, County Court, may and doe
give Oath: no Court can be without
a power to try, no triall can be without
Oath; and theresore the house of Com-
mons not claiming power to give an
Oath, can bring no matter to trial, and
consequently can be no Court.

14. H. 8. 3.
36. H. 8.
Dier 60.
4. par. inst
cap. 1

The behaviour of the Commons at
a Conference with the Lords; the
Commons are alwaies uncovered, and
sending, when the Lords sit with their
hats on, which shewes they are not
Colleagues in judgment: for fellow-
Judges owe no such reverence to their
Companions.

When was ever Fine imposed by the
House of Commons estreated in the
Exche-

11. H. 4. c.
11.

Exchequer? The ejecting of a Member, who hath sitten, is against Law: for they cannot remove a out of the House unduly returned much lesse a man returned duely.

2.H.4.c.d.
1.H.5.c.1.
8.H.6.c.7
23.H.6.
c.15.

By these Lawes it appeares, that any undue returne be made, the person returned is to continue a Member, the Sheriffes punishment is to one to the King, another to the that is duly elected, Imprisonment year without Bail or Mainprise and that person who is unduly returned, shall serve at his own charge, have no benefit at the end of the Parliament by the Writ *De solutione dorum Militum, Civium & burgensium Parliament.* And the triall of falsity of the return, is to be before Justices of the Assizes in the proper County, or by action of Debt in a

3 Ed.4.20
5 Ed.4.41

Court of Record. This condemns the Committee for undue Election which hath beene practised but of times; for besides these Lawes, against a Maxime in the Common Law: an Averment is not received against the returne of the Sheriffe, his Returne is upon Oath, which Oath is to be credited in that wherein the Returne is made.

The said Statutes condemne

make those Members no Members, which were not resiant in the County and Boroughs, for which they were elected, at the time of the teste of the Writ of the summons of the Parliament, and any abusive practice of some times to the contrary is against the Law, and ought not to be allowed.

Assault upon Parliament-men.

If a Parliament-man, or his Menial Servant be assaulted, beaten, or wounded, in the Parliament time, proclamation shal be made where the deed is done, that the Offender shall render himselfe to the Kings Bench, within a quarter of a year after proclamation made, & the offence there to be tryed, for Default of appearance the Offender is declared, attainted of the Misdeed, and it is accorded that hereafter it be done likewise in the like case. 5 H.4.c.6. 11. H.6.c. 11.

Serving of processe upon a Lord of Parliament punished in the Lords House. Bogo de Clare 18. E.3.4.pars inst.fol.24

Serving of processe upon *Thornsby* inquired of in the *Chancery*, and there the Offenders were convicted. Io Thornsbyes case, Clerk of the Parl.

The premises prove, that breaches of priviledge of Parliament may be punished ibid.10.E.3

punished else were then in Parliame

Vpon all this Discourse, it is e
to decerne what fruits may be exp
ed from this Parliament, contin
as long as the two Houses please; a
that there is no safty for this comm
wealth, but by the observations of th
antient Franchises, customes, a
Lawes.

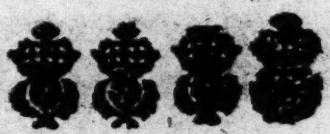
Conclusion.

*I Say againe, that without and Al
Oblivion, a gratious generall pa
from his Majesty, the arrears of
Souldiers paid, a favourable re
had to tender consciences, there w
be neither Truth nor Peace in t
Land, nor any man secure of any th
he hath:*

BRITISH MUSEUM

AN APOLOGY FOR THE ARMY.

Touching the eight Quæres, &c.



LONDON,
Printed in the Yeare,
1648.

AN APOLOGY FOR THE ARMY.

THese Treasonable and insolent *Queries* make the Army the houses Subjects, and not the *Kings*. *None by the Lawes of this Land can in this Kingdome have an Army but his Majesty.*

Bracton, fol. 118. Stamford. fol. 2.

It appeares, the Army doth now evidently perceive, that they were mis-led by the specious pretences of *Salus populi*, the maintenance of the Kings Honour, and of the maintenance of the Lawes of the Land, and Liberties of the Subject, to take up Armes against their naturall Liege Lord and Soveraigne the King: the people is the Body, the King is the Head; Was the Body safe when the Head was distressed and imprisoned? For Lawes and Liberties, have not the prevailing party in the two Houses destroyed above an hundred Acts of Parliament, and in effect *Magna Charta*, & *Charta de Forresta*, which are the Common lawes of the land? Doth

Mag. Chart. c. 1. & ult. All the Act concerning the King, Church, and Churchmen. 25. Ed. 1. cap. 1.

Exciſe, the Fifth and Twentieth parts, Meal-money, and many more Burdens which this Land never heard of before, maintaine the Liberties of the people? You and that party of the two Houſes, made the Army by ſeverall Declarations before Engagement, believe that you would preſerve the Kings Honour and Greatneſſe, the Lawes and Liberties of the people; The Army and the whole Kingdome now *facta vident*, ſee your Actions, and have no reaſon longer to believe your Oathes, Vowes, and Declarations; and ſince that party in the two Houſes refuſe to performe any thing according to their ſaid Oathes, Vowes, and Declarations, the Army and the Kingdome may and ought, both by your own principles, and the Lawes of the Land, to purſue the ends for which they were raiſed. And ſo your firſt *Quære* is reſolved; whereby it is manifeſt, that ſpecious pretences to carry on ambitious and pernitious Deſignes, fix not upon the Army, but upon you, and the prevailing party in both Houſes.

3 par. Inſt. f. 12. 39. El. 1 Iac. ibi. 3, & 3. H. 6. c. 3 11. M. 7. c. 1.

The ſolution of the ſecond Quære.

The Army, to their eternall honour, have freed the King from impriſonment at *Holmby*. It was High Treaſon

to

to imprison his Majesty: To free his Majesty from that imprisonment was to deliver him out of Trayterous hands, which was the Armies bounden duty by the Law of God and the Land. That party refused to suffer his Majesty to have two of his Chaplaines for the excercise of his Conscience; who had not taken the Covenant; free accesse was not permitted; doth the Army use his Majesty so? all men see that accesse to him is free, and such Chaplaines as his Majesty desired are now attending on his Grace: Who are the guilty persons, the Army, who in this action of delivering the King, act according to Law, or the said party who acted Treasonably against the Law? Who doth observe the Protestation better, they who imprison their King, or they who free him from prison?

That this Army was raised by the Parliament, is utterly false. The Army was raised by the two Houses upon the specious pretences of the Kings Honour, common safety, and the preservation of Lawes and Liberties; which how made good, hath beene shewed before, and all the people of the Kingdome do finde by wofull experience.

The two Houſes are no more a Pa-
liament, than a Body without a He-
14 H.8, 3. a Man. The two Houſes can make n
36 H.7, Dier 60, 4 pars Inſtit. p. 1, 3 12, 14. Court without the King; they are n
Body Corporate without the Kin
they all, Head and Members, ma
16 R. 2. c. 1. 5 Eliz. c. 2. one Corporate Body. And this is
clear a Truth, that in this Parliamen
17. Carol. The Act for the continuance of this Parliament. by the Act of 17. *Caroli* it is declare
That the Parliament ſhall not be di
ſolved or prorogued but by Act o
Parliament: but the two Houſes ma
reſpectively adjourne themſelves. Tw
Houſes and a Parliament are ſevera
things, *cuncta fidem vera faciunt*; a
circumſtances agree to prove this truth
Before the *Norman* conqueſt, an
4 par. Inſtit. p. 18. ſince to this day, the King is holde
4. par Inſtit. p. 4, 9 5 Eliz c. 1, 2 *Principium, caput, & Finis*, that is, th
beginning, Head, and chiefe end o
the Parliament, as appeareth by th
Treatiſe of the manner of holding o
Parliaments made before the *Norman*
Conqueſt; by the Writ of Summons
of Parliament whereby the Treaty and
Parler in Parliament is to be had with
the King only, by the Common Law,
by the Statute-Law, by the Oath of Su-
premacy taken at this, and every Par-
liament, it doth manifeſtly appeare,
that without the KING there can be no
coulour of a Parliament.

How

How many Votes have they revoked in one Session, yea, and Bills? Was there ever the like done? Nay; is not the constant course of Parliaments violated and made nothing thereby? They are guarded by armed men, divide the publike Mony among themselves, and that party endeavours to bring in a Forraigne Power to invade this Land againe. If they be no Parliament, as clearly they are none without his Majesty, they have no priviledges, but do exercise an Arbitrary, Tyrannicall and Treasonable power over the people.

By the Law of the Land, when Treason or Felony is committed, it is lawfull for every Subject, who suspects the Offendor, to apprehend him, and to secure him so that Justice may be done upon him according to the Law. 7 E. 4, 20, 8 E. 4, 3 9 E. 4. 27 4 H 7, 18 27 H 8, 23.

You say, the disobedience of the Army is a sad publick president, like to conjure up a spirit of universall disobedience. I pray object not that conjuring up to the Army, whereof you and the prevailing party in the Houses are guilty, who conjured up the spirit of universall disobedience against his Majesty, your and our onely Supreme Governour, but you, and that party in

the two Houſes, and even then whe the Houſe of Commons were takin and did take the ſaid Oath of Supremacy? For the Covenant you mention it is an Oath againſt the Lawes of th Land, againſt the petition of Right deviſed in *Scotland*, wherein the firſt Article is to maintaine the Reformed Religion in the Church of *Scotland*. And certainly there is no Subject of the Engliſh Nation doth know what the Scottiſh Religion is. I beleeve the Army tooke not the Covenant. No man by the Law can give an Oath in a new caſe without an Act of Parliament; and therefore the impoſers thereof are very blameable, and guilty of the higheſt Crime.

2 par. Coll. of Ord. pag. 303.
3 par. Inſt. fol. 165.
Petition of Right, 3. Car. 2 pars. inſtit. 719.

The Writer of theſe *Queres* ſeems to profeſſe the Laws; Let him declare what Act of Parliament doth juſtifie the tendring, giving, or taking of the ſaid Oath: he knoweth there is none, he knoweth that all the parts of it are deſtructive of the Laws and Government to maintaine which the Law of Nature, and the Law of the Land hath obliged them. The Oath of the Covenant makes the Houſes ſupream Governours in cauſes Eccleſiaſtical; the oath of Supremacy makes the King ſo: and yet both taken by the

ſame

ſame perſons, at the ſame time. What credit is to be given to perſons who make nothing of Oathes, and contradict themſelves? How do the Covenant & the Oath of Supremacy agree? How do their proteſtation and the Covenant agree? How do their Declarations and Oaths agree? The Lord be mercifull to this Land for theſe Oaths. It is a ſad thing to conſider that ſo many Gentlemen who profeſſe the Lawes, and ſo many worthy men in both Houſes ſhould be ſo tranſported as they are, knowing that the Lawes of the Land from time to time, and in all times, are contrary to all their actions, and that they yet ſhould amuſe themſelves and the people with the word Parliament without the King and with the Covenant; whereas they know they are no Parliament without His Majeſty: And that Engliſh men throwout the Kingdome ſhould ſwear a Covenant to preſerve the reformed Religion of *Scotland*, in Doctrine, Worſhip, Diſcipline and Government, which they do no more know than the Doctrine, Worſhip, Diſcipline and Government of *Preſter John in Æthiopia*; if they conſider it, they cannot but diſcerne that this is a high deſperate and impious madneſſe.

Be wise in time: Without the King and the Lawes, you will never have one hour of safety for your Persons, Wives, Children or Estates. Be good to your selves and to your posteritie; apply your selves to be capable of an Act of Oblivion, and of a generall Pardon, and to be able and willing to pay the Souldiery, and to allow a reasonable liberty for mens consciences; and God will blesse your endeavours: and the people (to whom you are now very hatefull) will have you in better estimation.

The third Quære is thus answered.

You resemble the Army to *Jack Cade* and his complices, and you cite the Act of Parliament of 31. *Hen. 6. cap. 1.* And that it may appear who acts the part of *Jack Cade*, you and that party in the two Houses, or the Army, I think it necessary to set down the said Act in words at length as followeth.

First, *Whereas the most abominable Tyrant, horrible, odious & arrant false Traytor* John Cade calling and naming himself sometime *Mortimer*, sometime Capt. of *Kent*, which name, fame, acts and feates are to be removed out of the speech and minds of every faithfull Christian man perpetually, *falsly*

and

and traiterously purposing, and imagining the perpetuall destruction of the Kings said Person, & finall subversion of this Realm, taking upon him Royall Power, and gathering to him the Kings people in great numbers, by false subtile imagined language, and seditiously making a stirring Rebellion & Insurrection, under colour of Iustice, for Reformation of the Lawes of the said King,, robbing, stealing and spoyling great part of his faithfull people. Our said Soveraigne Lord the King considering the premises, with many other which were more odious to remember, *by the advice and consent of the Lords aforesaid & at the request of the said Commons*, and by authority aforesaid, hath Ordained and established that the said *John Cade*, shall be reputed, had, named, *and declared a false Trayter to our Soveraigne Lord the King*; and that all his tyranny, acts, feats and false opinions shall be voyded, abated, nulled, destroyed, and put out of remembrance for ever: and that all Indictments, and all things depending thereof, had and made under to power of Tyranuy, shall be likewise void, anuulled, abated, repealed, and holden for none: and that the blood of none of them be thereof defiled nor corrupted

ted, but by the Authority of the
Parliament clearly declared for ev
and that all Indictments in times
ming, in like case under power
Tyranny, Rebellion and Stirring ha
shall be of no Record nor effect, b
void in Law; *and all the petitions*
livered to the said King in his
Parliament holden at Westm. No
6. in the 29. of his reigne, against
mind, by him not agreed, shall be tak
and put in oblivion, out of remem
brance, undone, voided, annulled, an
destroyed for ever, as a thing purpo
sed against God and Conscience, an
against his Royall Estate and preemi
nence, and also dishonourable and un
reasonable.

Now we are to examine who ha
trod in the steps of *Iack Cade*, you an
the present prevailing party of both
Houses *tooke upon them, and do tak*
all the Royall power in all things; so
did *Iack Cade*; as appeares by the said
Act; the Army do not so: *They who*
imprison the King purpose to destroy hi
person (our imprisoned Kings alwaies
* fared so) *Iack Cade* did likewise so
purpose; The said party in the two
Houses *made a stirring under colour of*
Iustice for reformation of the Lawes;
so did *Iac Cade*; The Army do not so

* Edward 1.
Henry 6
Richard 2.

but

but desire that the Lawes should be observed: Iack *Cade levied war against the* King, The Army preserves Him: Iack *Cade* dyed a *Declared Traitor to his Soveraign Lord* the *King*; this army might have lived to have the glorious true Honor of being restorers of their King.

Simon Sudbury Archbishop of *Canterbury* was murthered by *Jack Straw*. *William Laud* Archbishop of *Canterbury* was likewise murthered by that party of the two Houses, for that an Ordinance by Law cannot take away any mans life, and his life was taken away by an Ordinance of the two Houses, the army had no hand in it. Many misled by *Iack Straw*, perceiving his Trayterous purposes, fell from him: and as that was lawfull, just, and honourable, so it is for this Army to adhere to their naturall King, and so endeavour to settle the Kingdome again in the just Lawes and Liberties thereof: *London* did then right worthily adhere to the *King*, and the Laws, and not to *Jack Straw* and his specious pretences, and it is hoped they will now so do; By this it appeares, that the Gentlemans Discourse touching *Iack Cade*, fastens altogether on his party, and cleareth the Army.

25 Ed. 3. 4.
28. Ed. 3. 3. Petition of Right.

To

To the IV. *which is resolved thus.*

The Arreares of the Army (howbeit it is the least thing they look after) yet being not paid them, it is by the Law of the Land a sufficient cause to leave and desert that party in the Houses: a person who serves in any kinde, and is not paid his Wages, the desertion of that service is warrantable by the Lawes of the Land: You say, the Houses will reforme all things when the Army doth disband. Who will believe it? Will any beleive that the setling of the Presbytery will do it? Will any believe that his Majesty will passe the propositions sent to Him to *Newcastle*? Will any man believe that this Kingdome will ever be quiet without his Majesty and the ancient and just Lawes? Can the Members of the Army conceive any of them to be safe in any thing without a pardon from his Majesty? Have they not seen some of their fellowes hanged before their eyes, for actions done as Soldiers? Shall the Kingdom have no acount of the many Millions received of the publique Money, Will the Members of the Houses accuse themselves? Shall private and publique Debts be never paid? Shall the Kingdome lie ever under burthens of oppression and Tyran

Fitz.N,B 159
9 Ed.4, 20.
38 H.6,27
23 Eliz. Dier,369.

ny?

ty? There is no visible way to remedy all these Enormities but the power of the Army.

To the V. which is solved thus.

The Kingdom hath better assurance of Reformation from the Army, than from the Houses, for that in their Military way they have been just faithfull and honourable, they have kept their words; That party of the Houses have been constant to nothing but in dividing the publique Treasure among themselves, and in laying Burdens upon the people, and in breaking all the Oathes, Vowes, and promises they ever made; As the Army hath power, so now adhering to the King, all the Lawes of God, Nature, and Man, are for them, their Armies are just, and blessed; and the King is bound in justice to reward his *Deliverers* with honour, profit, and meere Liberty of conscience.

2 & 3 E 6. c.2. 11 H 7, c.1. Calvins case, 7. pars, Cook, fol. 11

To the VI. *Quære.*

All the sixth *Quære* containes calumnies cast upon the Army; the new Elections are against all the Lawes mentioned in the Margin, and are against the Ejection of the old Members, and by this it may be judged, what a House of Commons we have, By the said Lawes it appeares, that if any

11 H 4, c.1 1 h, 5, 2, 1. 8 h, 6, c.7 23 h. 6. c. 15.

any undue returne be made, the perſ
returned is to continue a Member, t
Sheriffes puniſhment is two hundr
pounds, one to the King, and t
other to the party that is duly elected
Impriſonment for a yeare without B
or mainprize, and that perſon who
unduly returned ſhall ſerve at his ow
charge, and have no benefit at the en
of the Parliament, by the Writ *De ſ
lutione Militum, Civium, & Burgenſ
um Parliament.* And the trial of the fal
ſity of the returne, is to be before th
Juſtices of Aſſizes in the proper cou
ty: or by action of Debt in any Cou
of Record. This condemnes th
Committee for undue Elections
3. Ed. 4. 20. which hath been practiſed but of lat
5. Ed. 4. 42. times, for beſides theſe Lawes, it is a
Maxime of the Common Law, an
Averment is not receivable againſt
the returne of the Sheriffe, for his
Returne is upon Oath, which Oath is
to be credited in that Suit wherein the
Returne is made.

The ſaid Statutes condemne Elecți-
ons of ſuch men who were not reſiant
and dwelt in the County or Boroughs
for which they were returned; and
any abuſive practiſe of late times to
the contrary, is againſt the Law, and
ought not to be allowed.

To the VII. *Quære.*

The *Querist* saith, that the Votes of the Independents in the Houses were arbitrary, exorbitant, and irregular, and that they disposed and finished more of the common Treasure than others; That whole *Quære*, I believe is false and slanderous; and the Author ought to make it good, or else to undergo the Law of *Talnio*; which is to suffer such punishment, failing of his poof as the accused should in case of proofe made. 37. Ed. 3. c. 17.

To the VIII. *Quære*

This *Quære* is all minatory and threatning, and the contrary of every part is true, by the deliverance of the King and Kingdom from the bondage of that party in the 2 Houses by the Army, their renown will be everlasting, they secure themselves, they content and please the Kingdome, City, and Countrey, as appeares by their confluence to see his Majesty and the Army, and their acclamations for his Majesties safety and restitution, all which doth evidence to every one of the army, how acceptable the intentions of the Army are to the people of this Land, who have been so long inthralled.

Sir *Thomas Fairfax*, let your Worthinesse

thineſſe remember your extractio
and your Ladies, by the grace and f
vour of the Prince, to be in the ran
of Nobility; Remember what honou
and glory the preſent Age and all po
ſterity will juſtly give to the Reſtor
of the King to his Throne, of th
Lawes to their ſtrength and of th
afflicted people of this Land to peace
Let the Colonels and Commande
under You and likewiſe your Souldi
ery, reſt aſſured, that they ſhall not on
ly ſhare in the renowne of this Actio
but alſo ſhall have ſuch remuneration a
their haughty Courage and ſo high
virtue doth deſerve. This his Majeſt
can and will do, the Houſes neithe
will nor can: and God bleſſe you al
and proſper you.

I Conclude all, as I have alwayes done. without an Act of Oblivion, a generall pardon, the arrears of the Souldiery paid, and a regard to Liberty of conſcience, this Kingdom will certainly be ruined.

Iudge

Iudge Ienkins PLEA

delivered into the Earl of *Manchester*, and the Speaker of the House of COMMONS, Sitting in the CHANCERY at WESTMINSTER,

Which was read by their Command in open Court, the 14th of *Febr.* 1647. And there avowed.

By DAVID IENKINS Prisoner in NEVVGATE.

LONDON,
Printed In the Yeare, 1648.

dge Jenkin's
PLEA
elivered in to the
rle of *Mancheſter*,
nd the Speaker of the
Houſe of COMMONS, ſit-
ting in the CHANCERY
at WESTMINSTER.

Have been required to appear in the Chancery the Twelfth of this inſtant *February*, before Commiſſioners appointed by the two ſes for the keeping of their Great and managing the Aſſures of the ncery.

cannot, nor ought, nor will ſub- to this power; I am a Judge ne to the Laws. The Law is, , that this Court is *Coram Rege in*

Cam-

4 pars inst. fol. 79
8 E 4. fol 5
9 E 4. f. 15

Cancellaria, Secondly the Chancell
or Keeper of the great Seale is by d
livery of the Great Seale to him
the KING, and by taking of
Oath.

The Oath followeth in these words.

42 pars inst. fol 83
10 R 2 rot. Parliamm 8

1. *Well and truly to serve our Sov*
raigne Lord the King, and his people
that Office.

2. *To do right to all manner of peop*
poor and rich, after the Laws and us
ges of this Realm:

3. *Truly to counsell the King and h*
Councell to conceale and keep.

4. *Not to suffer the hurt, or disher*
ting of the King, or that the rights
the Crown be decreased by any mean
a sturre as he may let it.

5. *If he may not let it, he shall ma*
it clearly and expresly to be knowne
the King with his advice and cou
sell.

6. *And that he shall do and purcha*
the Kings profit in all that he reason
bly may as God him help, and the co
tents of Gods book.

The said Commissioners among o- Declar. 17 Ian. 1647
rs have Imprisoned their King, e declared to the Kingdome that y will make no Addresses or Ap- ations to him, nor receive any m him.

ve counterfeited a new great Seal, d after destroyed the true old great le which belonged by the Law to Kings custody. Articuli sup. chartrs c. 5

These Commissioners have had no le delivered to them by his Maje- have taken no such Oath, or full kept it, and for these evident rea- s grounded upon the fundamental wes of this Land, these Commissi- rs have neither Court, Seale, or mission, and therefore I ought against the Lawes, against my owledg, and against my conscience mit to their power.

To affirme that they maintaine Kings power and authority in re- on to His Lawes (as they often do) d restraine only his Person is ange.

They must be remembred that the ouse of Commons this Parliament ve in charge to Mr. Solicitor upon e prosecution of the Bill of attain- r against the Earle of *Strafford*, to M. Solicitor pag. 27.
clare the Law to be, *that Machina-*

tion

tion of war against the Lawes
Kingdome, is against the King, th
cannot be severed.

Mr. Pim Pa. 165

Mr. Pym had in charge likewise u
on the same prosecution to declare,
That the King and his people are obl
ged one to another in the neareſt relat
tion, he is a Father, & the child in la
is called pars patris, *he is the Husba*
of the Common-wealth, they have th
same intereſts, they are inſeperable i
their condition be it good or evill; h
is the Head, they are the body, there i
ſuch an incorporation as cannot be di
ſolved without the diſtruction of both

20. H. 7. fol. 7.
8. H. 7. fol. 12.
1 Ed. 5. fol. 3.
4. Ed. 4. fol. 25.
5 Ed. 4. fol. 29.

This agrees with our Lawes, and th
Law of this Land: In that argumen
of Mr. Sollicitor, and diſcourſe of Mr
Pym, directed by the Houſe of Com
mons are contained the true rights, li
berties and lawes of the people deri
ced from our Anceſtors in all ages,
wherein there is no line or word but
agreeable to the Lawes, and is a neceſ
ſary and uſefull book to be peruſed
and followed by all; which book wa
publiſhed by Order of the Houſe o
Commons. If the doctrine of that
book had bin followed, we had not bin
ſo miſerable as we are; neither had
theſe great evills enſued, for the which
the Land mourns.

In

this Moneth of *February*, six years past, the onely Difference between his Majesty and the prevailing party in both Houses was touching the Power of the *Militia*, which in plain English is, Power over Sea and Land: this was the sole quarrell: the King and his Progenitonrs have had it in all times, the Lawes have fixed it upon them, they have used it for the Weal of the people: none of the Subjects ever had it or claimed it; the Lawes deny them; for the time they have had it, their pressures have bin miserable.

His Majesty hath a numerous Issue, and so hath his Father: many great Persons of *England*, and *Scotland* are of the Bloud Royal, and all the Kings of *Christendom* are of the same Bloud, so long as the Lawes last, or any of the said persons, or their Descendants be living, this people shall have neither peace nor profit; but all the confusions that are imaginable will attend them.

And therefore (at length) be good to your selves, restore our King, receive from Him an Act of Oblivion, a generall pardon, Assurance for the Arreares of the Souldiery, and meet satisfaction to tender consciences.

February 12. 1647. By *David Jenkins*, Prisoner in Newgate.

Collect. of Ordinances, 1 pars fol. 66 69 81

THE ANSVVER OF Iudge Ienkins, TO THE IMPVTATION PVT UPON HIS PLEA IN *CHANCERY*

Which was read in open Court the 14 of *Febr.* 1647.
And avowed by *David Ienkins* Prisoner in *Newgate*

Printed in the Yeare 1648.

THE

THE ANSVVER OF *Iudge Ienkins*, TO THE IMPVTATION Put upon him in *CHANCERY*.

I Have no diſpoſition, nor ever had, to be known by any publique Writing: theſe miſerable Times, which fill many mens mouthes, and moſt mens eares with notorious Untruths, thereby to blaſt and deſtroy the Kings Sacred Majeſty, his Lawes and Government, and to bring in a confuſion; enforceth me at this time (who formerly have written nothing but for the publique)

to let the World know how unjustly the Pamphleter of this Weeke, Licensed by our *Reformers*, hath traduced me touching a Suit commenced in their Court of *Chancery* against me, by one M. *Ernly* a *Wiltshire* Gentleman, touching the Estate of one M. *Thomas* of *Glamorganshire*: the Truth whereof is as followeth.

M. *Thomas*, whose Father and my Grandfather were two Brothers, about seventeene yeares past made his Will, and declared by the same his Son (being then of very tender yeares) a Ward to his Majesty, and made him Executour, and my selfe during his minority, (referring to his Wardship,) to Administer his Estate personall and testamentary, and to be accountable to his Son when he came to Age: And seventeene yeares sithence the Father died.

This Estate consists in a Stocke of Sheepe, so disposed by me as the number are yet continued, and for the number and condition, they were at their delivery backe, to be made as good by those persons who had the charge of them, as they were when they were received.

The rest of the Estate (for any considerable part) was in Mortgages of Land,

and forfeited in the life of my young Cousin *Thomas* for many of them, & many absolutely purchased by me in his name in his life time, for the which I am not yet payd.

The Land discended, and ought upon Sir *Edward Thomas*, my cousins heire at Common-Law; so that Mr. *Ernley*, the Plaintiffe in *Chancery*, hath no colour for the Land: For my young Cousin dyed without issue about 17. yeares old, and could not dispose of the Inheritance of any Land, by a pretended Will. The stocke of Sheepe remaines, if the Plaintiffe and the Reformers have not Plundered them, for the Money it came all to the Court, it was to satisfie the King for the Marriage.

The colour the Plaintiffe hath, is this; After the death of my olde Kinsman M. *Thomas*, by undue means the young Gentleman was married to M. *Ernleys* Daughter, in a way of Ravishment, being both children, without one penny payd, or consent of Friends or Kindered, For the which a Suit of Ravishment depended against M. *Ernley* and others in the Court of *Wards*.

The young Gentleman dyed about 17. yeares of age, sithence these con-

fusions without issue; and some hour before my young Cousins death (who dyed of a pestilent Feaver) Mr. *Erneley* pretends a Will made by him, and that he made his Wife (M. *Erneleys* Daughter) his Executrix: His said Wife dies soon after, & is pretended to make a Nuncapative Will, and to make her Father (M. *Ernly*) her Executor, and so pretends as Executor of an Executor of an Executor: which pretended Wills, he saith he hath proved in the Courts of his Freinds, the *Reformers*.

Whether such wills were made or no, must receive an equall examination, and of what validity they are, being pretended to be made by children *in extremis* if made at all? And whether an Executor of an Executor of an Executor can maintaine an account by the Law of the Land? And whether (I being Executor during the Minority, *viz.* the Wardship) my young Cousin could make such a Will as is pretended, he being no Executor till his full age.

37 H. 6 5, 21 E. 4, 24 The age touching Wills, the Law of this Land determins to be 21. years, and before that age at common Law an use could not be devised. For Wills touching goods and chattels, our Law for

many ages hath left the same to the
cession of the Civill and Canon
Lawes, in the Bishops Courts: That
Law, (as *Justinian* hath it in the se-
cond Book of his *Institutions*, the 12.
Chap.) is, *Impuberi non licet testari*: this
Pubertas begins at 14. it is *Plena pu-
bertas* at 18 yeares of age: The que-
stion is, whether this *jus testandi* is in
pubertate plena, or *pubertate inceptâ*.
Ingots Case, 5. part of *Cookes Reports*.
the Doctors affirmed, that 17 years of
age was a full age as to an infant Exe-
cutor to dispose of Goods: this opi-
nion hath been by others sithence de-
nyed. Sir *Edward Cook*, 11 part, *Inst.*
sect. 123. saith, He must be 10. which is
the time of *plena pubertas*, 2. *Hen.* 4.
12. an infant of 18. yeares of age may
be a disseisiour. Sir *Jo. Doderigge*
in his booke called, *The Office and
Duty of Executors*; which they say is
his, and it is a learned and laborious
Treatise, *fol.* 347. delivers that this
opinion of 17. yeares, for that ability
in an infant, hath been reported other-
wise. This latter opinion comes nea-
rer the Common Law, and the Sta-
tute Law of the Land; which Com-
mon Law, and Statue Law, gives in-
fants no power by Deed or Will to
make any disposition of any thing,

they have, before they be 21 yeares of of age.

It seems also more reasonable, because infants at 18 yeares have by the intendment of Law, as they grow in yeares, more use of reason, to discern what is fit for them to doe and act. And for a meere stranger to sue in a Court of Conscience, who pretends by such Wills of infants (the infant Husband being ravished) against the will of the Kindred of the deceased, who dyed six yeares sithence without issue (being 17 yeares of age) and that any part of his part of his estate should go that way by a course of Equity unlesse the Law be for Mr. *Erncley*, who heyd not a penny with his Daughter, and who would have the Husband of his daughter bring him a portion, by his pretended title of an Executor of an Executor of an Executeor, *viz.* of an infant the Executor of another infant, the Executor of a third person, seems very strange.

The said Licensed Historiographer of theirs, hath published the 16 of this present Moneth of *February*, 1647. *that I out of a desire to keep the Estate have in a suite in the Court of wards, in my Cousins life time, pleaded to the Jurisdiction of that Court.* It is true, I did

ſo; for I conceived that the Eſtate would be unſafe in Mr. *Ernley's* hands, and I was willing to preſerve it till my young Couſin came to be of age, to diſpoſe of it himſelfe, according as I was truſted.

The Law being, that the Court of *Wards* had no juriſdiction over the perſonall eſtate (for then the Marriage was paid for to the King, and all due to the King aſcertained.) It is true, that that was inſiſted upon as was juſt, for to preſerve the Eſtate from Mr. *Erneley*, who would have made what account he pleaſed to my Couſin at his full age: And this is the truth of that buſineſſe. 32. H. 8. c. 46. 4. pars inſt. fol. 201. 202.

That I declined not the Juriſdiction of the *Chancery*, to keepe an Eſtate in my hand, appeares, by my declining long ſithence the power of the Houſe of Commons to examine me; and the *Reformers* have all my Eſtate: What would Mr. *Ernley* have, when they [the *Reformers*] have all already; or can have from me, if he had any colour?

I deſire the good people of this City to obſerve what notorious Vntruths their Licenſed Hiſtorigraphers publiſh, to delude the people: In this particular caſe they publiſh.

Firſt,

First, *That the Suit against me, is in the behalfe of an Orphan*: M. *Earnety* (who is Plaintiffe in their Court) is a *Wiltshire* Gentleman, at the least of 50. years of age, there is their *Orphan*.

Secondly, *That* I *made a speech to the people at the* Hall *door, that the questioning of me for what* I *had done for the* KING, *was illegall; and that the Iudges had no power to try me, the* KING *being absent*; Another notorious untruth! For I protest to God, all that I said was onely this, *God preserve the* KING *and the Lawes*.

Thirdly, it is said that comming to the Barre, I stirred not my Hat; All the Lawyers then at the Barre were uncovered; wherefore I held it a civility, to be also uncovered; and so I was, as they all know.

Fourthly, That the E. of *Manchester should say, I received a great estate in money, of the Orphans estate*; As there is no truth in it, so it is most untrue that the said Lord so said (as all men present can testifie.) The truth is, they care not what they do, what they say, what they swear, nor what they write; Witnes the Declaration of a prevailing party of the H. of Cõmons, of the 11 of

this

this instant *February*; who contrary to the Oath of Allegiance, the Oath of Supremacy, the Protestation, their Solemne League and Covenant, their Declarations to make His Majesty a glorious King, fearfull to his enemies, and beloved of his Subjects; and yet now, after 22. yeares, they would insinuate to the people, that this King, whom they have so much magnified, hath poysoned his own Father.

Fiftly; it is a publike notorious untruth. "That the Parliament hath "published a Declaration against the King, of the 11. of this instant *Feb.* whereas it is well known to be the Declaration of the prevailing party of the House of Commons only, without the Lords; and so they would make that prevailing partie only to be the * Parliament.

Let the people of *England* beleeve their five sences; how it was with them seven yeares agoe, and before, during his Majesties Reign; how this Kingdom abounded then with Peace, Plenty, and Glory, to the admiration & envy of other Nations; & now let them consider and judge by their Senses, fithence those men (whom nothing would satisfie, but all Power both by Sea and Land, which in truth is the Regality

* Their licensed Historiographer who published this, is called their Kingdoms weekly post, from Wednesday Feb. 7 to Wednesday the 16 of Feb. 1647

regality & kingship, which they call the *Militia*) have usurped the said Power Regal, whether they have not by Impostures and Delusions, diffused among the people by themselves and their Agents, brought a flourishing Kingdom to the most deplorable condition it now is in.

To the end that this Kingdome may not utterly be ruined, God incline their hearts to restore his Majesty, and for their own and their Posterities sake to receive from his Majesty an Act of Oblivion, a generall Pardon, assurance for the Arrears of the Souldierie, and meet satisfaction for tender Consciences.

DAVID JENKINS,

BRITISH MUSEUM

Judge

Iudge Ienkin's

Remonſtrance

TO THE

LORDS

AND

COMMONS

OF

The two Houses of

PARLIAMENT at

WESTMINSTER

the 21. of *February* 1647.

By *DAVID JENKINS*
Priſoner in *Newgate.*

Printed in the Yeare 1648.

BRITISH MUSEUM

Judge Jenkin's

REMONSTRANCE TO THE LORDS and COMMONS AT *WESTMINSTER*

I Desire that the Lords and Commons of the two Houses, would be pleased to remember, and that all the good people of *England* do take notice of an Order of the House of Commons this Session, for publishing the Lord *Cook* his Bookes: which Order they may find printed in the last Leafe of the second part of his Institutes, in these words *viz.*

Die

Die Mercurii 12. *May* 1641.

VPon Debate this Day in the Commons Houſe of Parliament, the ſaid Houſe did then deſire & held it fit, that the heir of Sir *Edward Cooke* ſhould publiſh in print the commentary upon *Magna Charta*, *the pleas of the Crown*, and *the juriſdiction of Courts*, according to the intention of the ſaid Sir *Edward Cooke*, and *that none but the Heir of* the ſaid Sir *Edward Cooke*, or he that ſhall be authorized by him, do preſume to *publiſh in print* any of the foreſaid Bookes, or any Copy thereof.

H. Elſynge Cler.

Dom. Com:

And I do further deſire them that they would reade and peruſe M. *Solicitour Saint-Iohn*, and M. *John Pym*, their Bookes, publiſhed likewiſe this Seſſion, Whoſe Titles are as followeth *viz.*

An

An Argument of Law concerning the Bill of Attainder of High Treason of Thomas Earle of Strafford.

At a Conference in the Committee of both houses of Parliament.

By M. Saint John *his Majesties Solicitor Generall.*

Published by Order of the Commons House.

London, Printed by *G. M.* for *Jo. Bartlet*, At the Sign of the Guilt Cup neare *S. Austins* gate in *Pauls* Church yard. 1641.

And the Speech or Declaration of John Saint *John* Esquire.

After the Recapitulation or Summeing up of the charge of High Treason against Thomas Earle of Strafford, 12 *April.* 1641.

Published by the order of the Commons House.

London Printed for *John Bartlet*, 1641.

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1 Nothing

1. Nothing is delivered for Law my Books but what the H. Commons have avowed to be Law Bookes of Law published by th command this Session, and agreeab to the Bookes of Law, and Statutes this Realme in all former Times an Ages.

2. The supposed offence charged o me is against the two Houses, an none ought to be judges and parties by the Law of this Land, in their own case.

3. I desire the benefit of *Magn Charta, the Petition of right*, & othe good Lawes of this Land, which or daine that all *mens Tryals should be b the established Lawes, and not other wise*: they are the very words of th petition of Right.

An Ordinance of both Houses is no *Law* of the Land, by their own confession; and by the Bookes of the Lord *Cooke, published by their Order as aforesaid*, this Session in six several places.

1 Part. col. of Ordinances, fol: 728: 2 Pars inst fol 47, 48 157, 143 4 par institt: 23, 232, 298 4 H, 7, 18

For *Sedition*, in my Books there is none, but such as they have *authorised this Session, to be publisht & printed*. To publish the Law is no sedition. These Positions following I doe set downe for the Law of the Land in my Bookes,

...s, and they themselves have justi-
...and avowed them as aforesaid,
... agree the Law to be, and to have
...n in all times in all the particu-
... following, as here ensueth.

3 Part instit. pag. 12

1. *To imprison the King is high treason.*

M Sollicitor Pag. 12

2. *To remove Councellours from the ...g by force is High Treason.*

3 part instit pag 9

3. *To alter the establisht Lawes in any ... by force is High Treason.*

M Pym, p. 28

4. *To usurp the Royall Power is High ...eason.*

3 part instit. 3 10, 12, 26

5. *To alter the Religion establisht is ...gh Treason.*

3 part instit pag 9

6. *To raise rumours and give out ...ds to alienate the peoples affections ...m the King, is High Treason.*

M Sollicitor p, 0, 10, 136

7. *To sesse Souldiers upon the people of ... Kingdome without their consent, is ...gh Treason.*

M Sollicitor pag 9

8. *The execution of paper orders by ...uldiers in a military way, is high ...eason.*

M Sollicitor pag 9

9. *To counterfeit the great Seale, is ...igh Treason.*

M Sollicitor pag, 23

10. *The Commission of Array is in ...rce and none other.*

4 part inst. p, 125

11. *None can make Judges, Justices, ...eriffes, &c. but the King; The King ...akes every Court.*

Iustice Hutons argument, fol. 39, 40

12. *The great Seale belongs to the Kings Custody, or to whome he shall ...ppoint, and none other.*

4 part instit

13. Ordi-

2 part instit articul. super chartas cap. 5

1 part. Coll. of Ordin & Cook ut supra.

13. *Ordinances of one or both Houſ* *are not lawes to binde the people.*

4 Inſt. inſt. 25.

14. *No priviledge of Parliament, hol* *for Treaſon, Felony, or breach of t* *Peace,* not for 20. Parliament-me forty, nor three hundred.

M. Solicitor pag. 8. 78.

15. *To ſubvert the fundamenta* *lawes is High Treaſon.*

M. Solicitor pag. 12. 27.

16 *To levey War againſt the perſ* *of the King is High Treaſon.*

M. Solicitor pag. 26.

17. *To perſwade Forreiners to leve* *war within this Kingdome is Hig* *Treaſon.*

M. Solicitor pag. 35.

18 *To impoſe unlawfull Taxes,* *impoſe new Oathes, is High Treaſon.*

M. Pym. p. 8.

19. *The King can doe no wrong.*

M. Pym. p. 87.

20. *It is a pernitious Doctrine* *teach Subjects, they may be diſcharg* *from the oath of Allegience.* Then wh means the Doctrin of both Houſes the Votes 11 of *Feb.* 1647.

M. Pym. p. 24.

21 *A neceſſity of a mans own maki* *doth not excuſe him.* The requiring forcing of the Militia, brought the n ceſſity of arming upon the Houſes.

3 part. inſt. pag. 91

22. None can leavy war within thi "realme without authority from th "King, for to him only it belonge "to levy war, by the common law o "the land to doe otherwiſe is hig "Treaſon by the ſaid Common law The only quarrel was & is the Mili

for which so much blood hath been ...ent, and Treasure.

M. Solicitor 70.71.

...3. *No Parliament without the King, ...* Principium, caput & finis.

4.part. inst. pag.1.3.4.

...4. *Presentment or tryall by Jury, is ...bright-right of the Subject.*

4.pars. inst. 41.356.

There is no doubt but that many in ...h Houses are free from this *great* ..., and that most of the prevailing ...ty, had at first no intentions to pro...ed so farre; but the madnesse of the ...ople (who are very vnstable, and so ...y will find them) and the successe ...their Armies (having this great rich ...ity to supply them, with all accomo...tions) have so elated them, that the ...ll is come to this height.

For my selfe, to put me to death in ...s cause, is the greatest honour I can ...ssibly receive in this World: *Dulce ... decorum est mori pro partia.* And for ... Lawyer and a Judge of the Law, to ...e, *dum sanctis patriæ legibus obsequi...r*, for obedience to the Lawes; ...ill be deemed by the good men of this Time a sweet smelling sacrifice; and by this and future Times, that I dyed full of yeares, and had an honest and an honourable end; And posterity will take knowledge of these Men who put some to death for subverting of the Lawes, and others for supporting of them, &c.

yet

Bracton l. c. 9. p. 107. 4 pars inst 342, 343 Stanford 99

Yet mercy is above all the Workes of God. *The King is Gods Vicar on earth.* In *Bracton*, who was a Judge in *Henry* 3. time, you shall find the Kings oath; *To shew mercy* is part of it: You are all his children; say, and doe what you will, you are all his Subjects, and *He is your King* and parent. *Pro magno peccato paululum supplicii satis est patri*; and therefore let not the prevailing party be obdurate, out of a desperation of safety: That which is past is not revocable; Take to your thoughts your parents, your wives, your children, your friends, your fortunes, your countrey; wherein Forreigners write there is *Mira aeris suavitas & rerum omnium abundantia.* Invite not them hither, the only way to be free of their company will be, *To restore his Majesty, and receive from Him an Act of Oblivion; a generall pardon, Assurance for the Arreares of the Souldiery and meet satisfaction to tender consciences.*

God preserve the King and the Lawes.

DAVID JENKINS,
Prisoner in New-gate.

MUSEVM BRITANNICVM